



Report of the
Australia India Institute
Taskforce on Tobacco Control
Plain Packaging of Tobacco Products



Australia India
Institute

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The views, findings and recommendations of this report are the edited product of the collective deliberation of a group of independent analysts. The report does not represent the views of the Australia India Institute. Neither should it be read as reflecting the views of specific participants, authors and/or the institutions with which they are affiliated on issues canvassed in the report.

From the Director of the Australia India Institute

The Australia India Institute has quickly established itself as Australia's pre-eminent centre for the study of India and as a leading centre of dialogue and research partnerships between India and Australia. Based at the University of Melbourne, the Institute has initiated a wide range of programmes and projects to contribute to developing and enriching the relationship between two great democracies bound by shared values and increasingly common interests.

The Australia India Institute has sponsored several Taskforces on critical areas of mutual interest to India and Australia, including on The Rise of China; Indian Ocean: Security & Stability; and Public Perceptions and Policy Change.

The Australia India Institute Taskforce on Tobacco Control has been established to determine whether plain packaging legislation for all types of tobacco products is a viable tobacco control measure in India. As we know, more than one million people die every year in India due to tobacco use and in Australia it accounts for more than 8 percent of the total disease and injury burden.

We are deeply grateful to two outstanding global leaders in public health, who agreed to chair the Taskforce with both Indian and Australian experts: Prof. K. Srinath Reddy, President, Public Health Foundation of India and Prof. Rob Moodie, School of Population Health, University of Melbourne.

This Report must be read by policy makers in New Delhi and in Canberra, but it will also be of great interest to the wider academic community in both countries. We hope that the findings and recommendations will lead to real change in a critical area of public health.

Amitabh Mattoo

July 2012, Melbourne

Foreword

More than one million people die every year in India due to tobacco use and in Australia it accounts for more than 8% of total disease and injury. Considering the huge death, disease and injury burden of tobacco, the global community, under the auspices of the World Health Organization (WHO), adopted the Framework Convention on Tobacco Control (FCTC). Both the Indian and Australian Governments played constructive and leading roles in FCTC negotiations, supporting a strong and robust Treaty that incorporated effective evidence-based tobacco control measures for reducing demand and supply of tobacco.

Following the adoption of the Treaty, both India and Australia adopted stronger tobacco control regulations, but there are numerous instances where the tobacco industry posed hindrances in implementing effective and evidence-based tobacco control measures. These included violation of advertising bans and using tobacco packages as parallel marketing strategies.

In order to alleviate tobacco industry interference and reduce the promotional function of packaging, several countries including New Zealand, Canada and the United Kingdom discussed, debated and planned the introduction of plain packaging of tobacco products. However, Australia led the world by introducing plain packaging of tobacco products in 2011 – under legislation that prohibits the use of logos, colours, brand images or promotional information on tobacco product packaging.

India occupies a unique position in tobacco control as the second largest producer and consumer of tobacco products in the world. The huge burden of tobacco use in India, aggressive marketing of tobacco products targeted to youth, and a delay in the introduction of large and strong pictorial health warnings merit advocacy for plain packaging of tobacco products in India as well. In recognition of this, the Australia India Institute (AII) supported the constitution of a Taskforce to examine the feasibility of introducing plain packaging in India. The Taskforce, comprising of many key tobacco control experts from both countries, has been instrumental in compiling the latest evidence and existing legislative and policy frameworks to support adoption of this strong tobacco control measure in India.

It has been invaluable to have this joint Australia-India Taskforce to utilise the expertise and experience from Australia in plain packaging. In India we are confident that we have the key partners involved in facilitating this process and developing a policy that is appropriate and effective in this context.

This Policy Document, developed by the Taskforce over a period of six months, includes a comprehensive literature review on plain packaging and

highlights the challenges faced by Australia in introducing and standing firm on implementation of plain packaging. It aims to allay the concerns and myths about plain packaging, especially related to international and bilateral trade agreements. To substantiate the policy recommendations and future pathways on adoption of plain packaging in India, the AII also commissioned market research that lends substantial support, across demographic groups and key stakeholders, in favour of the plain packaging of tobacco products in India.

This Report is a compendium of evidence for policy makers to give thought to introducing this effective tobacco control measure and for civil society and other stakeholders to better understand the strengths and opportunities of such a policy decision and its impact on public health at large. It is not merely about plain packaging to minimise usage but it is about lives and livelihoods. This policy initiative, if implemented along with other proven interventions in tobacco control, will save thousands of lives and prevent thousands of young Indians from becoming addicted to a substance that kills more people worldwide than any other substance.

Our special thanks to all partners and collaborators including the AII, the Nossal Institute, The Union, PHFI and HRIDAY for their steadfast dedication to bring about this landmark Document that is a critical milestone in scaling up effective tobacco control advocacy and policy making in India and the Region.

Co chairs of the Australia-India Institute Taskforce on Tobacco Control



Prof K. Srinath Reddy
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Executive Summary

This report is inspired by the efforts of the Australian government, which legislated the plain packaging of all tobacco products from December 1, 2012. Plain packaging legislation *prohibits* the use of corporate logos, colours, brand images or promotional information on the packaging of tobacco products. Brand and product name use is allowed in a prescribed, colour, style, font, and location. Consumer information, such as toxic constituents and pictorial health warnings required by law, remain on the package and are rendered more prominent on plainly packaged products.¹

The Australia India Institute Taskforce on Tobacco Control (the Taskforce) argues that India can introduce the plain packaging of tobacco products as part of a comprehensive approach to mitigate the tobacco epidemic. To make the case, this document presents the Taskforce's original market research evidence regarding plain packaging in India, a review of policy initiatives to introduce plain packaging from various national settings and evidence from a consultation with a range of Indian public health and other experts.

As with other things visually seductive, tobacco product packaging is central to the strategy of an industry which captures and retains customers by addicting them. Essentially, packaging is all that differentiates brands, especially in the highly similar consumer products space of cigarettes and other tobacco products.² Colours and fonts tend to produce particular responses in consumers, often influenced by strong social and cultural forces.³ Imagery and symbols also exert very powerful effects, linking desirable attributes with particular brands.⁴ The influence of 'incidental brand encounters' is exploited by marketers, who know that stylish product packaging generates positive associations in the minds of non-smokers when they happen to see a smoker carrying a well-designed tobacco product package. An attractive package serves as a status symbol for the smoker, and it draws in non-smokers too. As more countries pass laws prohibiting tobacco advertising and sponsorship, the tobacco product package is effectively becoming the *last* promotional recourse for the tobacco industry.^{5,6,7,8,9,10,11.}

Through covert and deceptive strategies, the tobacco industry systematically seeks to undermine tobacco control efforts. Recognising this, Article 5.3 of the Framework Convention on Tobacco Control recommends that governments insulate these policies from commercial and other vested interests. In the past, legislation requiring plain packaging has been resisted at every level by the tobacco industry despite the efforts of several governments. In fact, the theme for World No Tobacco Day 2012 was 'tobacco industry interference'. Multinational tobacco corporations are availing themselves of investment protections in international investment agreements (IIAs) while a few World Trade Organization (WTO) member states, supported by tobacco companies,

are filing complaints claiming that plain packaging violates international trade obligations. The WTO provides, under Article XX(b) of the General Agreement on Tariffs and Trade 1994 (GATT) and Article 8(1) of the Trade-Related Aspects of Intellectual Property Rights agreement (TRIPS), general exceptions for actions necessary to protect human health. Moreover, plain packaging is consistent with the Technical Barriers to Trade (TBT) Agreement because of its limited impact on trade and its contribution to the legitimate objective of protecting public health.¹²

Tobacco consumption, the leading cause of preventable death and disease in the world, is now spreading to developing countries, because the tobacco industry views it as its next big market. While tobacco production globally has doubled since the 1960s, consumption in most high-income countries such as Britain, Canada, the United States, and Australia has actually fallen over the past 20 years.¹³ Tobacco production has increased by 300 per cent in low- and middle-resource countries while dropping more than 50 per cent in high-resource countries.¹⁴ Demand for tobacco products has continued to fall in developed countries, dropping to 2.05 million tonnes in 2010, but tobacco consumption has grown to 5.09 million tonnes in developing nations.^{15,16} Tobacco consumption in developing countries is actually *increasing* by 3.4 per cent per year.¹⁷

The *Global Adult Tobacco Survey India Report for 2009-2010* has revealed that 35 per cent of Indian adults – 275 million – use tobacco.¹⁸ About one million Indians are estimated to die each year from smoking alone. The public policy response from the Government of India has been positive and significant: India was one of the first countries to ratify the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), and has implemented the WHO's MPOWER package in addition to passing the Cigarettes and Other Tobacco Products Act in 2003. **However, more can be done to prevent new initiation and reduce overall prevalence of tobacco use.**

The time is ripe. As an emerging market leader, India can lead the way for the developing world by introducing plain packaging. Tobacco consumption is the single greatest preventable cause of death in the world today, killing almost six million people a year. If left unchecked, that number will increase to more than eight million a year by 2030.¹⁹ Tobacco is also a risk factor for the four leading non-communicable diseases (NCD) – cancer, heart disease, diabetes and chronic respiratory diseases – which account for more than 63 per cent of global deaths according to the WHO.²⁰ In India, NCDs are estimated to account for 53 per cent of all deaths and smoking is implicated in over 50 per cent of tuberculosis deaths in India.^{21,22} As an innovative tobacco control policy intervention, plain packaging would potentially prevent the more than 5,500 children who try tobacco for the first time every day in India from actually taking up a life-threatening habit.²³ **Every day, 80,000 to 100,000 children worldwide start smoking.** About half of these children live in Asia, so India would be setting

a positive example for other Asian nations to whom this applies.²⁴ Youth are especially susceptible to sophisticated advertising campaigns.²⁵ **But plain packaging, in addition to other proven measures such as greater tobacco taxes and package warnings, can reduce the temptation of tobacco for potential future users.**

The situation in India is grim. Tobacco use is significantly high among young teenagers between 15 and 20. Studies in India indicate that tobacco consumption patterns begin as early as in Grade Six, and are strongly related to advertising exposure, indicating that early intervention with youth is necessary to prevent the uptake of a tobacco habit.²⁶ Tobacco victims also die young: the number of children chewing tobacco has doubled in India in the last decade, and it is these children who are developing oral cancers in their teenage years.²⁷ In this context, India's much-touted 'demographic dividend' could be affected by widespread tobacco consumption, proving detrimental to India's medium- and long-term strategies for economic development. In India, poverty is accentuated and perpetuated by the addictive nature of tobacco products and one way of breaking the hold of tobacco is to enable its users to clearly visualise the damaging health effects it can have every time they purchase a tobacco product. A tobacco habit in fact *worsens* low household income and poverty. Tobacco consumption in India not only drives high morbidity and mortality, but those addicted to it tend to divert already-scarce resources away from food, education and health from their households to consume these tobacco products.²⁸ **Direct expenditure on tobacco by households potentially impoverishes nearly 15 million people in India annually,** even more than medical expenditures related to tobacco use.²⁹

Cancer, lung disease and chronic obstructive pulmonary disease alone account for 25 per cent of all public spending on health in India.³⁰ Worse still, tobacco products are diverse and very affordable, making it appealing for each strata of society.³¹ So by promoting effective graphic health warnings and reducing the role of extraneous elements such as brand logos, enticing language and attractive packaging, plain packaging legislation provides the consumer with accurate information about the product and its very dangerous health effects. **We argue that plain packaging will work in India because of fresh new India-specific data and evidence.**

Preliminary market research studies undertaken by the Taskforce validate the utility of plain packaging in the Indian context. The findings are broadly in conformity with studies from Organisation for Economic Co-operation and Development (OECD) countries. The market research included focus group discussions, counting both adults and adolescents, and including both tobacco users and non-users belonging to different socio-economic status (SES). The majority of the participants indicated that pack design was the first thing that drew someone to a tobacco product; one young girl commented that she had

initially assumed a cigarette package contained candies because “it looked so beautiful and attractive”. Those from a higher SES thought the more flashy and expensive packs denoted elite status, while plain packs would look like “a local brand” and thus less appealing. As mentioned by one of the high SES adult males, “The richer people have to show off their wealth, so they buy more attractive looking and expensive packs.”

In addition, a stakeholder analysis was also conducted; stakeholders were solicited from various disciplines with extensive experience in their field of expertise, including participants from the Ministry of Health and Family Welfare; the WHO; community-based organisations (CBOs) and non-government organisations (NGOs); experts in trade and industry laws and senior faculty members from educational institutions. Seventy-five percent of participants agreed that plain packaging of tobacco products would reduce tobacco usage and could be implemented in the country; an overwhelming majority thought it was relevant to the Indian context.³²

Reviewing the expert legal analysis, we find little, if any, sound legal bases for the tobacco industry’s claims – under various provisions of international law and bilateral investment treaties – against governments taking measures to protect public health through tobacco control. This is supported by the World Intellectual Property Organization (WIPO) position on the issue.³³ Yet, the tobacco industry has pushed trade barriers as a legitimate defence to policy-makers despite receiving expert advice to the contrary.³⁴ While the threat of violating trade obligations may have deterred governments in the past, such claims are being given careful attention now.

Consultations with experts in the tobacco control community in India, Indian Government officials and international public health officials cognisant of the situation in India indicate that India’s tobacco control legislation provides legislative space for taking steps to move towards plain packaging. Members of the tobacco control community and legal experts have suggested a number of tactical and strategic steps. These stakeholders indicate that **India needs to rigorously enforce all of its existing regulations supporting tobacco control:** first, enforce regular increases in the proportion of space required for pictorial health warnings on tobacco products. Second, all the pictures officially notified for use on tobacco products need to have a strong visual impact, keeping in mind the largely illiterate base of Indian tobacco product consumers. More than half of deaths due to tobacco smoking occur among the illiterate sub-population and roughly 80 per cent of deaths are in rural areas.³⁵ These should be scientifically field-tested for efficacy, and their specifications of how the images are to be selected, produced and printed needs to be specific, precise and reduce the room for manufacturer discretion.

Key Recommendations

SHORT TERM MEASURES

Frame plain packaging as a public health issue. Since plain packaging is meant to curb tobacco consumption, it should be communicated as being in the larger public health interest. The measure should be framed as beneficial for the public good and a positive policy measure. This message needs to be repeated; it will help the Government avoid being sidetracked by vested commercial interests.

Strengthen pictorial warnings. This sends a very strong public health message. Existing pictorial warnings should be made more graphic, be scientifically chosen, field-tested, and rotated more frequently.

Establish a Code of Conduct pursuant to Article 5.3 of the FCTC. Designate a specific governmental authority at both the Central and State Government levels to prevent the tobacco industry from unduly influencing the government and ensure that its interactions with bureaucrats and political leaders be open to public scrutiny.

Compile a body of evidence supporting plain packaging in the Indian context. This should reside with the Ministry of Health and Family Welfare, which is best positioned to be the nodal ministry to pilot this legislative change, to make the case for plain packaging. The case must be made through this body of evidence that plain packaging is a necessary public health measure that can achieve its objective.

Consider compatible best practices from the Australian experience. This document is a toolkit for actionable tobacco control steps leading to real policy change. It demonstrates that a viable model exists for the Indian Government, tobacco control experts and civil society.

INTERMEDIATE MEASURES

Amend COTPA - the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. As a first step, Section 5, provisions that limit tobacco advertising, promotion and sponsorship, and Section 7, provisions and specifications for pack warnings for tobacco products, can be amended suitably to facilitate the introduction of plain packaging in India.

Refer to Articles 11 and 13 of the FCTC when advocating for plain packaging. Plain packaging is already being considered in the UK and New Zealand and has received widespread coverage on an international scale. It should be framed as an obligation of FCTC-ratifying countries.

Carefully analyse all international investment agreements. India has more than 60 bilateral investment treaties (BITs), multilateral treaties and Free Trade Agreements (FTAs) with varying definitions of 'investments', 'trademark usage'

and ‘intellectual property rights’. Although unlikely to stop plain packaging, these agreements need to be studied, and the Indian Government needs to carefully consider the implications of these existing agreements *vis a vis* plain packaging legislation.

Educate the public about the burden of tobacco consumption in terms of disease, deaths, both State and individual costs, and on how plain packaging can assist in significantly reducing this burden. As in Australia, the measure will be supported for its public health impact if the authorities educate the public and increase their understanding of, and openness to, plain packaging.

Conduct further research to assess the understanding and acceptability of plain packaging.

LONG-TERM MEASURES

Ensure that a law for the implementation of plain packaging is watertight, specific and stringent and avoids loopholes that the industry could use. In the event that the amendments/laws drafted for plain packaging are found to be in conflict with other existing laws, an overriding provision would need to be made so that plain packaging laws could override other legislation.

Accompany plain packaging legislation with a comprehensive suite of measures. Tobacco control cannot be a piecemeal effort but needs to be comprehensive, involving increased taxation, education campaigns, a push for better pictorial warnings, a ban on Point of Sale advertising, and plain packaging.

Foresee key structural and employment issues and plan economically viable alternatives for tobacco farmers, *bidi*-rollers and *tendu* leaf collectors. Devise options to develop opportunities for other livelihoods in sufficiently yielding cash crops for a sustainable solution.

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The Australia India Institute Taskforce

The Australia India Institute Taskforce (the Taskforce) on Tobacco Control has been established to determine whether plain packaging legislation for all types of tobacco products is a viable tobacco control measure in India. It is funded and supported by the Australia India Institute (AII), University of Melbourne, and is composed of experts in the field from both countries

Australia India Institute Taskforce on Tobacco Control

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Acronyms

AACS: Australian Association of Convenience Stores

AAR: Australian Alliance of Retailers

ACOSH: Australian Council on Smoking and Health

ASH: Action on Smoking and Health in Australia

AII: Australia India Institute

BAT: British-American Tobacco

BIT: Bilateral Investment Treaty

CBO: Community-Based Organisation

CCA: Cancer Council Australia

CCV: Cancer Council Victoria

CMA: Canadian Medical Association

COTPA: The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003

FCTC: Framework Convention on Tobacco Control

FGD: Focus Group Discussion

FET: Fair and Equitable Treatment

FTA: Free Trade Agreement

GATS: Global Adult Tobacco Survey

GATT: General Agreement on Tariffs and Trade

GoM: Group of Ministers

HRIDAY: Health-Related Information Dissemination Amongst Youth

IIA: International Investment Agreement

ISDS: Investor-State Dispute Settlement

MPOWER: WHO introduced the MPOWER package of measures to assist in the country-level implementation of effective measures to reduce the demand for tobacco, contained in the WHO FCTC.

Monitor tobacco use and prevention policies

Protect people from tobacco smoke

Offer help to quit tobacco use

Warn about the dangers of tobacco

Enforce bans on tobacco advertising, promotion and sponsorship

Raise taxes on tobacco

NAFTA: North American Free Trade Agreement

NCD: Non-Communicable Disease

NGO: Non-Governmental Organization

NPHT: National Preventative Health Taskforce

NTCP: National Tobacco Control Program

PHFI: Public Health Foundation of India

PIL: Public Interest Litigation

PMA: Philip Morris Asia

PTA: Preferential Trade Agreements

RFID: Radio-Frequency Identification

RWA: Residents Welfare Association

SES: Socio-Economic Status

TAPS: Tobacco Advertising, Promotion and Sponsorship

TBT: Technical Barriers to Trade Agreement

TRIPS: Trade-Related Aspects of Intellectual Property Rights Agreement

UNCITRAL: United Nations Commission on International Trade Law

WHO: World Health Organization

WIPO: World Intellectual Property Organization

WTO: World Trade Organization

Glossary

<i>Bidi</i>	<i>A bidi is made by rolling a dried, rectangular piece of temburni leaf (Diospyros melanoxylon) with 0.15-0.25g of sun-dried, flaked tobacco into a conical shape and securing the roll with a thread</i>
Betel leaves	Betel leaves are an indispensable part of <i>paan</i> . The betel vine is a creeper, and it is often grown next to areca-nut trees, which provide support, or on wooden scaffoldings
<i>Gutka</i>	A preparation of crushed areca nut (also called betel nut), tobacco, catechu, paraffin, lime and sweet or savory flavorings, consumed much like chewing tobacco
<i>Hookah</i>	An Indian water pipe
<i>Khaini</i>	A mixture of sun-dried tobacco and slaked lime
<i>Paan</i>	Betel quid
<i>Tendu</i> leaves	<i>Tendu</i> leaves are used to wrap sun dried, flaked tobacco, to prepare <i>bidis</i>

Introduction

Of the world's more than one billion tobacco smokers, more than 80 per cent live in low- and middle-income countries and more than half will eventually die prematurely of a tobacco-related disease. Each year, the tobacco epidemic is estimated to kill nearly six million people, including more than 600,000 non-smokers who are exposed to tobacco smoke. By 2030, if nothing is done, tobacco could kill eight million people a year.¹ One person is predicted to die every six seconds from tobacco-related causes this century.²

The total number of premature deaths caused by tobacco during the twentieth century has been estimated at about 100 million worldwide and, if current levels of tobacco use continue during the twenty-first century, the death toll is projected to increase to one billion.³ The WHO, which provides these estimates, has predicted that India will have the fastest rate of rise in deaths attributable to tobacco in the first two decades of the twenty-first century. Many of these deaths will occur in the productive years of adult life.⁴

Several measures have been implemented in Australia in an effort to control the health effects of tobacco use, including increased taxation, bans on advertising, smoking in public spaces, and the sale of tobacco products to minors. After a recommendation from the 2009 report of Australia's National Preventative Health Taskforce (NPHT), on April 29, 2010 the Australian government announced that plain packaging of tobacco products would be fully implemented in 2012. Australia was the first country in the world to set a deadline.

This document discusses some aspects of the process Australia underwent to introduce such groundbreaking legislation, and assesses the necessity for parallel legislation in India. This application of the Australian experience to India will provide a perspective that may inspire other countries to implement such legislation and spread the use of plain packaging.

The tobacco epidemic in the developing world

As tobacco regulation becomes more widespread and stringent in developed nations, resulting in reduced tobacco consumption, tobacco companies have turned to poorer, less educated, less well-regulated and less powerful populations to market their product. The developing world's share in global cigarette sales has increased sharply, rising to over 70 per cent.⁵ Multinational tobacco companies based in Britain and the USA are largely responsible for the spread of the smoking habit to developing countries. The entry of a multinational tobacco company into a new market is typically accompanied by sophisticated and effective advertising and promotional activities, often leading local, national

tobacco companies to step up their marketing activities in response. As a result, overall expenditure on advertising increases with a corresponding rise in tobacco consumption and a huge impact on human health.⁶ India's Ministry of Commerce has boldly proposed banning all direct foreign investment of tobacco products on the recommendation of the Ministry of Health.⁷ Already, India is setting an example for other developing nations also aiming to curb tobacco use for public health reasons.

Low- and middle-income nations must particularly be on alert – it is anticipated that their share in both world tobacco production and consumption will dramatically increase. While tobacco production has doubled since the 1960s, consumption in most high-income countries such as Britain, Canada, the United States and Australia has fallen over the past 20 years.⁸ Tobacco production has increased 300 per cent in low- and middle-resource countries while dropping more than 50 per cent in high-resource countries.⁹ Demand for tobacco products has continued to fall in developed countries, dropping to 2.05 million tonnes in 2010,¹⁰ whereas tobacco consumption has grown to 5.09 million tonnes in developing nations.¹¹ Alarmingly, tobacco consumption in developing countries is increasing by 3.4 per cent per year.¹² The tobacco industry has long been keen to enter the potentially lucrative Chinese market, which accounts for one out of every three cigarettes smoked worldwide.¹³ Countries struggling with widespread poverty and unemployment can be reluctant to clamp down on an industry that provides revenue and jobs. However, they are also slowly coming to recognise the costs associated with smoking, and the human suffering from tobacco-related disease.¹⁴ In Bangladesh, money spent on tobacco could be used to purchase enough food to remove 10.5 million children from their current state of malnutrition¹⁵; In Vietnam, 2.3 times more money is spent on tobacco than on education.¹⁶

The tobacco industry is able to wield a great deal of power over the governments of many countries, especially in poorer countries where regulations to control smoking tend to be weak. Advertising restrictions are few, or negligible, and advertising tends to reflect the aspirations of the poor to emulate richer nations.¹⁷ One component of the comprehensive approach required to negate the detrimental effect of advertising is to mandate generic plain packaging on all tobacco products

The tobacco epidemic in India

There are approximately 275 million tobacco users in India, and about one million Indians die each year from smoking alone. Ten per cent of the world's tobacco smokers live in India, and India has the second largest group of smokers in the world after China.¹⁸

Cigarettes, consumed primarily by those in the middle and upper socio-economic status (SES) segments, account for only one-third of tobacco consumption in India, while alternative forms of tobacco, such as *bidis*, *hookah*, chewing, or powdered tobacco consumed by those in lower SES segments, account for the majority of tobacco use.¹⁹ Thus, plain packaging of all tobacco products in India

would be most effective given the diversity of products used by the population. In addition, plain packaging will enhance the impact of the graphic health warnings, which is particularly appropriate for the large illiterate section of Indian society. More than half of deaths due to tobacco smoking occur among the illiterate sub-population and roughly 80 per cent of deaths are in rural areas.²⁰

In India, a thriving tobacco industry coexists with low income and poverty. Consumption of tobacco in India is therefore a concern not only because of its consequent high morbidity and mortality but also due to the opportunity cost of spending on tobacco.²¹ The burden of tobacco costs on households is very high. In developing countries, where people in general are relatively constrained by money, it is reasonable to expect that along with the direct health consequences of tobacco consumption the expenditure on tobacco will have higher opportunity cost in terms of reduced expenditure on basic goods such as food, education and energy. A study conducted in 2008 used data from a nationwide representative household survey to examine the effects of tobacco spending for rural and urban households in India. It was found that an increase in tobacco expenditure led to a decrease in the budget share devoted to food, education and entertainment, while it led to a rise in the share devoted to healthcare. This especially affects women and children, who have less bargaining power than men, who constitute the majority of tobacco users in India.²² Direct expenditure on tobacco by households can potentially impoverish nearly 15 million people in India annually – more than the medical expenditures related to tobacco use.²³

Health costs for tobacco-related illness are also very high. Approximately USD \$6.6 billion from public and private funds was spent for the treatment of tobacco-related diseases in 2002-2003, a figure that accounts for both treatment and indirect costs of premature mortality.²⁴ India's direct healthcare costs due to tobacco are roughly \$1.195 billion. In contrast, the Planning Commission says that revenue collected from tobacco products annually in India, largely coming from taxation of cigarettes, is \$1.62 billion.²⁵ Because the *bidi* industry is fragmented there are no specific figures on how many *bidis* are sold or produced. According to EuroMonitor International, the *bidi* industry in India is worth USD \$4.1 billion,²⁶ and is a powerful lobby in Indian politics, which keeps taxes on *bidi* products low and regulations lax.²⁷

The tobacco epidemic in Australia

Tobacco use is one of the leading preventable causes of death and disease in Australia, responsible for about 15,000 deaths annually. While this figure has been gradually decreasing, it can be translated into one in every ten deaths every year, illustrating the continued gravity of this public health concern.^{28,29} The total cost of tobacco use to the Australian public is significant. In 2004-2005, social costs of tobacco abuse totalled just under AUD \$31.5 billion, more than 56 per cent of the total estimated social costs of drug abuse in Australia in that year.^{30,31} Retail sales of cigarettes and other tobacco products generated total revenues of about AUD \$10 billion in 2009.³²

Tobacco use has both a monetary cost and emotional cost. The greater part of the burden is borne by the individual and by households. Of the total estimated social costs of tobacco abuse, 38 per cent were tangible costs and 62 per cent were intangible.³³ Of the total tangible costs of smoking in 2004-2005, more than half were borne by households, 42 per cent were borne by business, and only 7.6 per cent were borne by governments.³⁴ By their nature, all intangible costs are borne by individuals. Tangible costs of tobacco abuse include items such as spending on healthcare services or subsidies for drugs for people sick because of smoking, or extra spending on staff to replace people absent from work due to illness or who have left the workforce because of a smoking-caused illness.³⁵ Intangible costs include loss of enjoyment of life and pain and suffering of smokers and their friends and families, and are generally much more difficult to value than tangibles because there is no market for intangibles. While intangible costs of tobacco use are not things that can easily be measured, they are substantial.³⁶ The toll on Australians and their families due to tobacco-related habits and disease is thus considerable, and continues to be a major public health concern.

Chapter 1

Plain packaging

1.1 What is plain packaging?

Plain packaging of tobacco products refers to prohibiting the use of corporate logos, colours, brand imagery or promotional information on the packaging of tobacco products. Brand and product names would have to be displayed in a standard font, size, and place.³⁷ In Australia, the size and shape of the package and cellophane wrappers is also being regulated to prevent novelty pack shape varieties and covers replacing on-pack imagery. Manufacturers must include required health warnings and other legally mandated product information such as toxic constituents, tax-paid seals or package contents. Packaging differentiates brands, being particularly important in homogenous consumer products such as cigarettes.³⁸ Colours and typeface elicit particular responses in consumers, often influenced by strong social and cultural forces. Imagery and symbols also exert powerful effects, linking desirable attributes with particular brands.³⁹ As more countries pass laws prohibiting tobacco advertising and sponsorship, the tobacco product package is slowly becoming the last promotional recourse for the industry.^{40,41,42,43,44,45,46}



This image is a representation of how tobacco suppliers are expected under law to print their cigarette pack packaging from 1 December 2012 in Australia.

Image © Commonwealth of Australia

Pack design communicates the ‘personality’ of a cigarette brand to the smoker, who then projects these characteristics by handling and displaying the package throughout their daily routines.⁴⁷ Just as designer clothing, accessories and cars serve as social cues to style, status, values and character, so too can cigarette packs signify a range of attributes about users. As ‘badge products’, cigarettes can reinforce the characteristics conjured by

brand image.^{48,49,50,51,52}

The tobacco industry has long acknowledged the huge importance that packaging has within the marketing mix. In 1995, a tobacco industry executive summed it up by saying:

“... If you smoke, a cigarette pack is one of the few things you use regularly that makes a statement about you. A cigarette pack is the only thing you take out of your pocket 20 times a day and lay out for everyone to see. That’s a lot different than buying your soap powder in generic packaging.”⁵³

Brand loyalties are usually established during the teenage years, with relatively few smokers switching brands annually. In addition, the vast majority of smokers begin their smoking careers as teenagers. Teenage smokers smoke the most heavily advertised cigarette brands. Despite this evidence, cigarette manufacturers claim that they do not want minors to smoke and that their marketing activities are aimed only at the established adult smoker. However, a study that involved analysis of tobacco industry documents, including marketing and product production instructions, found that package style and colour are manipulated to make a product more appealing to a young ‘starter’ smoker.⁵⁴ And it works.^{55,56}

As for the efficacy of plain packaged tobacco products – the research findings are prolific and date back to the 1990s. Overall, these findings suggest that reductions in brand imagery would diminish the attractiveness of tobacco products, promote cessation-related behaviours among some smokers, and reduce initiation.

Rootman and Flay examined impressions of plain packaging among American and Canadian young people aged 12 to 14; they found that evaluations of plain packs were consistently negative compared to branded cigarette packs.⁵⁷ Young respondents regarded plain packages as old fashioned and boring, and thought fewer people would smoke if cigarettes were sold in plain packages. A New Zealand study of young people with an average age of 13, conducted when text warnings were introduced in 1990, examined branding and plain packaging and found reducing brand imagery was associated with higher recall of health warnings.⁵⁸ Overall, both studies found that reducing brand imagery diminished the physical and social attractiveness of tobacco products, and suggested that plain packaging would promote cessation attempts and reduce initiation among experimenters. Similar findings were reported after testing young 14- to 17-year-old smokers’ and experimenters’ recall of text warnings featured on branded and unbranded packaging. Their results suggest plain packaging enhanced recall of short direct messages.⁵⁹

A report on cigarette package health warnings examines 2008-2010 data from the Global Adult Tobacco Survey (GATS) in 14 WHO FCTC countries, to assess the effects of cigarette package health warnings on interest in quitting smoking among smokers of manufactured cigarettes. In India, among those aged 15 years or older, 78 per cent of men and approximately 18 percent of women reported noticing a health warning on a cigarette package; keeping in mind that a fraction

of women smoke cigarettes in India compared to men, this is a significant finding. Among smokers who noticed a package warning, the percentage thinking about quitting because of the warning was more than 50 per cent.⁶⁰ Given that generic packaging has been found to enhance health warnings, which describe and illustrate the health effects of using the product, plain packaging can only strengthen this effect. Pictorial and text health warnings are made starker through plain packaging, and these health warnings are an important source of conveying the adverse health effects of tobacco use.^{61,62,63,64} Since tobacco consumption in India is inversely related to education, and most tobacco users fall into the illiterate or low-literate groups, pictorial health warnings are especially important as a source of information. Countries continue to push for stronger health warnings on tobacco packaging, and a plainly packaged tobacco product can only enhance the effectiveness of these warnings. Studies indicate that the stronger the warning, whether it be text or graphic, the more likely a smoker is to make a quit attempt due to the reactions the warnings invoke.⁶⁵

A study by Wakefield, Germain and Durkin has shown that as brand design information was progressively removed from cigarettes, they were seen as less appealing and the cigarettes in the packs were considered to be less satisfying and of lower quality. When shown regular packaged brands and the dull, generic packs, the 813 smokers rated the dull packs as much less attractive and popular, and those who would smoke them as much less stylish, outgoing and mature than smokers of the original pack.⁶⁶

Such studies have shown consistently that compared to branded packs, plain packs reduce the flair and appeal associated with smoking and are perceived as 'dull and boring' and cheap-looking.^{67,68,69,70,71,72} A recent study funded by Cancer Research UK corroborated that removing branding and packaging cigarettes in plain packaging helps remove the appeal of smoking.⁷³ Smokers were provided with plain brown packs labelled with a neutral brand name into which to decant their usual cigarettes for two weeks, and their experiences were compared with a two-week period of smoking their cigarettes from branded packs. As Melanie Wakefield explains:

"The experience of smoking cigarettes from plain brown packs was reportedly **less enjoyable and less satisfying** for smokers than those same cigarettes when smoked from their regularly branded packs. Further, some evidence of **avoidance of smoking** was observed when cigarettes were enclosed in plain rather than branded packs, by smokers concealing the pack, smoking fewer cigarettes and thinking more about quitting. While no naturalistic study can replicate the real-world implementation of the proposed plain packaging legislation where the packs of every Australian smoker would ultimately be the same unappealing brown, it is worth reflecting that the pattern of observed findings are entirely consistent with a **much wider body of evidence that branding and labelling can modify the actual subjective experience of products when they are consumed.**"⁷⁴

Certainly, in India, there is a strong correlation between exposure to tobacco advertising and tobacco use, especially among youth. More importantly, counter-advertising was found to effectively act as a cessation aid, facilitating quit behaviour.⁷⁵ However, up until now no research into plain packaging has so far been undertaken in India. The market research conducted by this taskforce is the first of its kind in India and has provided some insight into the potential efficacy of plain packaging in the country. As has been illustrated, the burden of tobacco-related disease and cost is too great for the government to ignore.

1.2 Support for plain packaging and the WHO Framework Convention on Tobacco Control

The WHO FCTC is one of the most significant developments in international tobacco control in the past 40 years. It is a multilateral treaty aimed at protecting “present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.”⁷⁶ The FCTC defines tobacco advertising and promotion as “any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly”, and requires that each ratifying country undertake, in accordance with its constitution or constitutional principles, a “comprehensive ban of all tobacco advertising, promotion and sponsorship”.⁷⁷ If all other promotional avenues, including Point of Sale advertising, are removed, British American Tobacco and Philip Morris have predicted that pack design alone will drive brand imagery.⁷⁸ Unless governments implement further restrictions on packaging, the industry will invest in innovative pack design to advertise to and recruit new smokers and retain existing ones.⁷⁹

The FCTC also requires health warnings on tobacco product packages sold in countries that ratified the Treaty. These warnings must (1) describe the harmful effects of tobacco use; (2) be approved by the appropriate national authority; (3) appear on at least 30 per cent, though they should appear on 50 per cent or more, of the package’s principal display areas; (4) be large, clear, visible, and legible in the country’s principal language(s); (5) be rotating; and (6) may be in the form of pictures or pictograms. Guidelines adopted by the FCTC’s governing body, the Conference of the Parties, on Article 11 (packaging and labelling)⁸⁰ and Article 13 (tobacco advertising, promotion and sponsorship) recommend that Parties consider adopting plain packaging.⁸¹ Plain packaging would most certainly assist in making health warnings on tobacco products clearer, more visible and thus more effective. Both Australia and India have ratified the treaty.

1.3 Support for plain packaging within the guidelines of the implementation of Articles 11 and 13 of the WHO FCTC

Article 11	“Parties should consider adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). This may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from them, and address industry package design techniques that may suggest that some products are less harmful than others.” ⁸²
Article 13	“Packaging and product design are important elements of advertising and promotion. Parties should consider adopting plain packaging requirements to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive.” ⁸³

Chapter 2

Plain packaging attempts in Canada, New Zealand and Australia

The following case studies demonstrate how the tobacco industry fought plain packaging using trade arguments, circumventing discussion of the health benefits of the policy. Companies focused their efforts on intellectual property agreements governed (at the time) by the World Intellectual Property Organization (WIPO), one of the 17 specialised agencies of the United Nations, and investment protection clauses contained in international agreements such as the North American Free Trade Agreement (NAFTA). As explained through the experiences of these three governments, the tobacco industry has little or no basis for any of its legal claims. This is supported by meticulous analysis by experts in the field of international law, as well as by WIPO itself.⁸⁴ Yet, the industry promoted the existence of trade barriers as a legitimate defence to policymakers despite receiving expert advice to the contrary. As an early British American Tobacco case study on advertising and such agreements as the Trade-Related Aspects of Intellectual Property Rights (TRIPS) or the General Agreement on Tariffs and Trade (GATT) recommended, “Even when arguments are sometimes not conclusive in themselves, they should be used uniquely to lobby local governments in our favour.”⁸⁵ This tactic continues to be used today.

2.1 CANADA

The first records of discussion of plain, or generic, packaging trace to Canada, when the Canadian Medical Association (CMA) adopted a motion proposed by Dr. Gerry Karr to have cigarettes sold “in the equivalent of plain brown wrappers” in 1986.⁸⁶

Canadian parliamentarians first seriously considered plain packaging as a regulatory option in early 1994, when the House of Commons Standing Committee on Health launched hearings into plain packaging. The tobacco industry had just won a lengthy campaign to roll back high tobacco taxes, and Parliament sought to offset the health effects of lower taxes by implementing plain packaging regulations.⁸⁷ Multinational companies joined together to create the ‘Plain Packs Working Group’, in 1993, which served to block requirements for larger health warnings and stonewall plain packaging. This group engaged support from third parties such as the Canadian Bar Association and the National Intellectual Property Section⁸⁸; they also created their own body of ‘evidence’ by publishing their own materials and papers and recruiting their own experts.⁸⁹ **Given the widespread concern about tobacco’s negative health effects, the tobacco industry was wary of debating plain packaging as a health issue. The industry saw trade and investment rules, especially those included in the recently enacted NAFTA, as an effective way to frame plain packaging**

as a legal issue divorced from health concerns.⁹⁰ It is evident now, in retrospect, that the industry was well aware of the deceptiveness of their trade arguments. Notes from the International Conference on Sales and Distribution in 1994 suggest that the high level Tobacco Strategy Group, formed by British American Tobacco (BAT), was told that trade agreements would provide little support against plain packaging.⁹¹ When the Standing Committee on Health opened its hearings into plain packaging on April 12, 1994, the campaign against it was well underway. The industry delivered witnesses who would give the plain packaging issue an intellectual property framing, who would counter health agency studies with industry-created ‘expertise’, and who would create a public ‘debate’ intended to weaken public consensus on the proposal. The Group inundated the government with letters from industry as well as third parties, reiterating their trade arguments.

The mere threat of investment arbitration had a powerful impact on Parliament’s deliberations on plain packaging. Although it was the Canadian Supreme Court’s invalidation of Canada’s *Tobacco Products Control Act* in 1995 that ultimately put the plain packaging debate to rest, the NAFTA threat is widely believed to have deterred the government from taking legislative action on plain packaging prior to the Court’s ruling.⁹² This threat deterred the government despite John Clutterbuck of Rothman’s, in a background paper prepared for his colleagues in other tobacco companies, observing that “there appears to be no direct redress available to companies under NAFTA as regards product labelling.”⁹³ In the same paper, he candidly concludes: “The international trade argument by itself will not however be sufficient to ward off the threat of plain packs.”⁹⁴ In addition, Ludwig Baeumer of the WIPO’s Industrial Property section had written to Rothman’s in July 1994 that “the Paris Convention does not contain any obligation to the effect that the use of a registered trademark must be permitted.” It is crucial to note that NAFTA had come into effect only five weeks before the Prime Minister announced his government was open to considering plain packaging. As a result, there was much uncertainty about the difference these agreements would make to Canada’s ability to set its own domestic agenda.

2.2 NEW ZEALAND

In May 1989, the New Zealand Department of Health’s Toxic Substances Board released a wide-ranging proposal to strengthen tobacco control, a 139-page report called “Health or Tobacco: An End to Tobacco Advertising and Promotion.”⁹⁵ It was the first to recommend that cigarettes be sold only in white packs with simple black text and no colours or logos. In a move similar to the tobacco industry’s in Canada, the New Zealand Tobacco Institute decided in May 1993 that regulations governing packaging and labelling should not be “contested as a health issue, a children’s smoking issue, or a consumer information issue” but rather, should be treated as expropriation of intellectual property and contested politically.⁹⁶ On May 25, 1995, the New Zealand Public

Health Commission noted that, “Several submissions support(ed) all tobacco products being sold in plain packaging, white background with standardised black lettering,” but that opposition to improved warnings included the view that “the amendments will be in breach of relevant trademark conventions”.⁹⁷

2.3 AUSTRALIA

Proposals in Australia to legislate plain packaging date back to 1992. In that year, proposals by the Australian Ministerial Council on Drug Strategy recommended larger health warning messages and steps towards generic packaging of tobacco products. In February 1995, BAT’s Australian subsidiary, WD & HO Wills, provided the Senate Inquiry into the Tobacco Industry and the Costs of Tobacco Related Illnesses with a supplementary submission, focused entirely on generic packaging. This strongly worded submission claimed that plain packaging would violate “the legal and constitutional rights of the manufacturers who own them. Loss of brand rights would lead to substantial claims for compensation.”⁹⁸ Included among the international agreements, which the companies felt protected them from plain packaging legislation, were the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property (Paris Convention). What the companies did not tell the Australian Senate was that two years previously they had sought and received advice that they had “no basis for any legal challenge” and that the British government had told them they “did not have a case”.⁹⁹ In July 1995, four months after BAT’s appearance before the Senate Inquiry, the health minister’s spokesperson explained that the reason that Australia would not be pursuing plain packaging was because of free trade and constitutional constraints.¹⁰⁰

2.4 Plain packaging succeeds in Australia

In 2008, the new Rudd federal Government established the National Preventative Health Taskforce (NPHT), which recommended, among many other things, the current Australian plain packaging initiative. The current Australian initiative arose from the establishment of this taskforce, which was announced on 9 April 2008. The NPHT, comprised of Australian health experts and leading authorities on tobacco control, was asked to provide evidence-based advice to government and health providers regarding the health challenges caused by obesity, tobacco and alcohol, and provide a National Preventative Health Strategy by June 2009. In October 2008, the NPHT released a Discussion Paper, *Australia: the Healthiest Country by 2020*, together with various technical reports, including one presenting international and Australian evidence about tobacco. On the basis of these documents, the NPHT then called for public submissions and conducted consultations. Following this process, the government released the final report of the taskforce in September 2009. It contained 136 recommendations and, in the case of tobacco, recommended a comprehensive approach including significantly increasing tobacco excise and stronger regulatory control on the

manufacture, packaging, marketing and use of tobacco. Specifically, the Strategy recommended eliminating the promotion of tobacco products through design of packaging. The Strategy recommended, “mandating standard plain packaging of all tobacco products to ensure that design features of the pack in no way reduce the prominence or impact of prescribed government warnings”.¹⁰¹

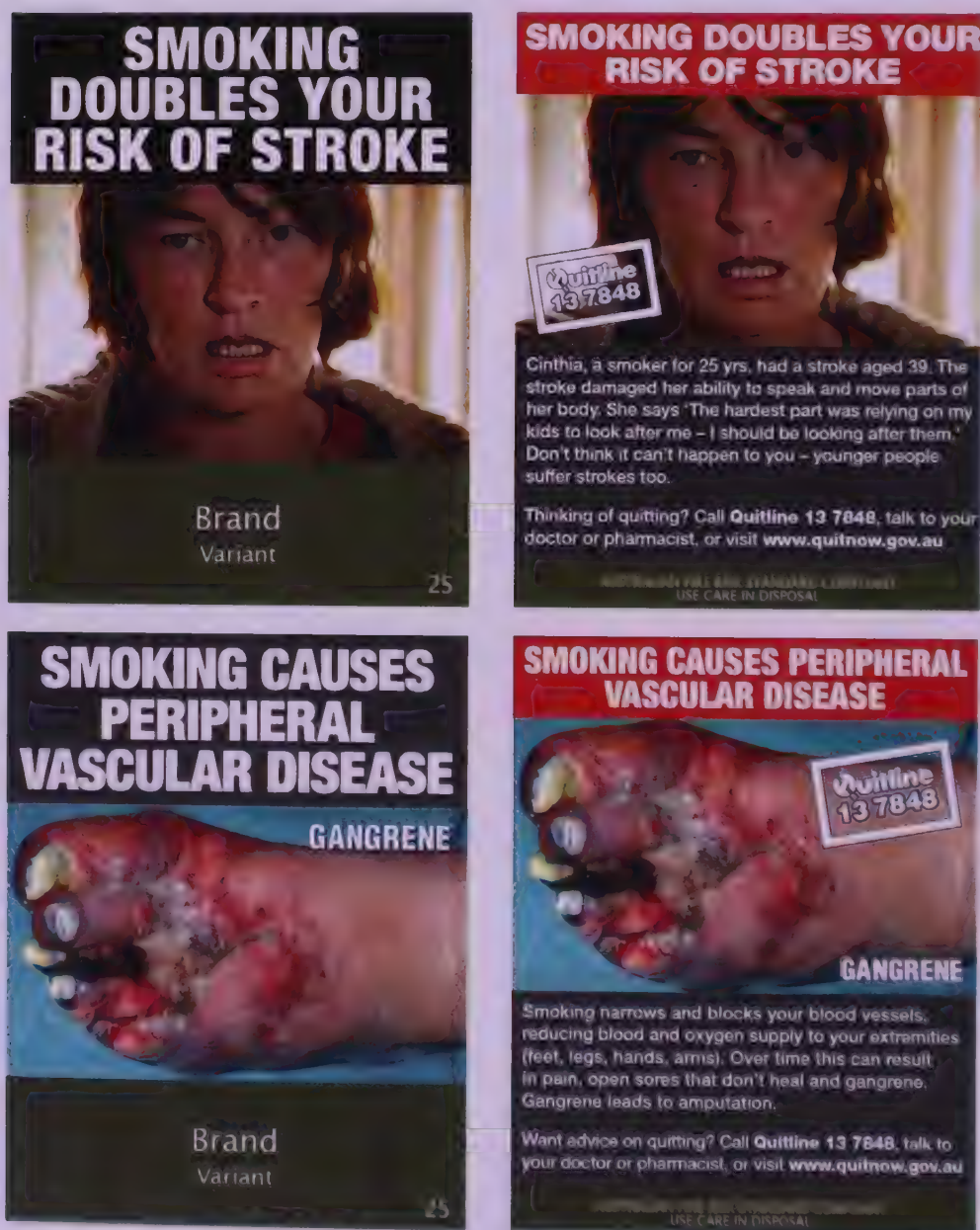
Then-Federal Health Minister Nicola Roxon played a key role in facilitating the recommendations of the taskforce, particularly around tobacco control. At the media conference to launch the report she said, “We are killing people by not acting.” After this recommendation from the NPHT on 29 April 2010 the Australian government announced that it would be introducing legislation for the mandatory plain packaging of tobacco products in 2012. Australia was the first country in the world to set a deadline for the measure.¹⁰²

Concrete steps followed this announcement in April 2011, with the release of a consultation paper and exposure draft of the relevant legislation, and in July 2011, with the introduction of a revised bill into the Australian House of Representatives.¹⁰³ The Australian Parliament passed the legislation, which consists of two bills - the *Tobacco Plain Packaging Bill* 2011 and *Trade Marks Amendment (Tobacco Plain Packaging) Bill* 2011 - on November 21, 2011, and set an implementation date of December 1, 2012.

The scheme will apply to all tobacco products, prescribing the shape, size and type of packs and cartons and specifying that all retail packaging (apart from brand names, health warnings and other legislative requirements) must have a matt finish and be coloured either ‘drab dark brown’ or as prescribed by regulation.^{104,105} The government based the design and colour of the plain packs on market research.¹⁰⁶ No trademarks or other marks – for example, graphics, symbols, letters – may appear on tobacco products, retail packaging or wrapping of tobacco products, except on retail packaging, where the “brand, business or company name ... and any variant name for the tobacco products” may appear in a prescribed place and form, alongside legislative requirements and any other marks permitted by regulation.¹⁰⁷ Graphic health warnings will cover at least 75 per cent of the pack.¹⁰⁸

The measure was not developed in isolation, however. It was part of a comprehensive programme of action by the Federal Government, which complemented a range of measures taken by State and Territory governments, including a 25 per cent increase in tax, a ban on Internet advertising, the establishment of the Australian National Preventive Health Agency, special funding for Indigenous tobacco programmes and increased funding to national tobacco media campaigns.¹⁰⁹ The *Tobacco Plain Packaging Act* 2011 complements a comprehensive suite of tobacco control measures that have developed in Australia (at both federal and state and territory levels) over the last 30 years.¹¹⁰

Although Australia has been recognised as one of the highest achieving countries in relation to tobacco control, tobacco smoking continues to kill more than 15,000 Australians a year, at a social cost of \$31.5 billion per annum.^{111,112} The stated purpose of the *Tobacco Plain Packaging Act 2011* is therefore to improve public health — including by discouraging smoking initiation, encouraging smoking cessation, discouraging relapse, and reducing exposure to second-hand smoke — and to give effect to Australia's international obligations as a party to the WHO FCTC.¹¹³



These images are a representation of how tobacco suppliers are expected under law to print their cigarette pack packaging from 1 December 2012 in Australia.

Image © Commonwealth of Australia

The measure could not have passed without the unrelenting determination of Minister Roxon, who spearheaded the campaign, and the support of the Department of Health and Ageing. Minister Roxon indicated the measure

was supported by – at the time – more than 20 different studies that show that the marketing and packaging of tobacco products is an effective way to lure people to a very addictive and lethal product. Evidence for the effectiveness of package advertising in tobacco products and the effectiveness of generic packaging has since proliferated. The measure was also strongly shepherded by major civil society organisations such as the Cancer Council Australia and its Victoria branch (CCA/CCV), Action on Smoking and Health in Australia (ASH), Australian Council on Smoking and Health (ACOSH), and The Heart Foundation, who continually communicated with the government about evidence supporting the measure.

While Health Minister Roxon had initially set July 2012 as an implementation date for the measure, the bill's implementation was postponed due to procedural delays in the upper house and provision of more time so that the industry could adapt machinery for the new guidelines on packaging.¹¹⁴ The Protecting Children from Tobacco (PCT) alliance, made up of 42 non-governmental organisations from health, child welfare, church, social equity, Indigenous and other sectors, urged the Senate at the time to push for a speedy passage of the bills. The Rural Doctor's Association also backed the bills, declaring that rates of smoking-related lung cancer are high in regional areas, particularly in remote Indigenous communities.¹¹⁵ Six Australians of the Year recipients also jointly released a statement in support of plain packaging in 2011.¹¹⁶ Public support soared in May 2011 for plain packaging, as a Newspoll survey for the Cancer Council found 59 per cent of respondents supported the Government's push for the law.¹¹⁷ However, that percentage dropped to 48 three months later, most likely as a result of the industry's misleading information campaigns against the measure.¹¹⁸ Nevertheless, polls had indicated that Australians were predominantly in favour of the measure, and multi-party support was also forthcoming.

2.5 The response of multinational tobacco companies to plain packaging

As Australia's 2010 federal election approached, the three major tobacco companies (BAT, Philip Morris and Imperial Tobacco) poured massive sums into advertising and lobbying, including a \$5 million mass media advertising campaign against plain packs, fronted by the hastily formed 'Australian Alliance of Retailers' (AAR). Leaked industry documents show that in May 2011, before the birth of the AAR, Philip Morris sought advice from a lobbying and public relations firm called the Civic Group about how to fight the Government's plan to introduce plain packaging for cigarettes by 2012. The Civic Group's proposal recommended using third parties, including retail groups, to sell the message. The AAR was formed shortly after, in August, purporting to represent thousands of ordinary shopkeepers. On the day the AAR was set up, documents show it became the instant beneficiary of millions of dollars from three of the world's top cigarette manufacturers: Philip Morris - \$2.1 million; Imperial Tobacco - \$1.08 million; and British American Tobacco - \$2.2 million.¹¹⁹ The Australian

Association of Convenience Stores (AACS) pulled out of the consortium once it realised the true nature of the alliance. In a statement published on its website, the AACS said other members of the AAR “had different priorities”.¹²⁰ Major supermarket chain Coles distanced itself from it, as did Woolworths, repudiating the retail group’s “deceptive behaviour”.^{121,122}

In addition, other methods to sap government resources were being pursued. Government departments have been inundated with Freedom Of Information (FOI) requests, including 64 to the Department of Health and Ageing from tobacco industry and interested parties since April 2010. The Department estimated that processing one of these requests ran into the hundreds of thousands of dollars, and that they have totalled well over \$643,000 in costs to date.¹²³ A separate room in the Department has been dedicated to responding to these requests.¹²⁴

The Rudd government, and subsequently the Gillard government, refused to allow these tactics to derail the legislation. Gaining bipartisan support is crucial in such battles, and the government eventually secured the support of the opposition. The Australian government is effectively reshaping the culture and norms of tobacco use as part of its campaign to reduce tobacco consumption.

In their attempts to discredit Australia’s plain packaging scheme at an international level, tobacco companies are turning to investment protections within international investment agreements (IIAs). Investment arbitration, also referred to as investor-state dispute settlement (ISDS), allows a foreign corporation to sue a country where it has an investment. In order for a company to access ISDS, it must be based in a country that has a bilateral investment treaty or trade agreement containing a chapter on investment with the country in which it is operating. If such an agreement exists, the investor does not need its home state to back its claim - it has direct access to binding arbitration. Australia has 26 investment protection agreements in force: 21 bilateral investment treaties (BITs), and five preferential trade agreements (PTAs) containing investment provisions.¹²⁵

In June 2011, Philip Morris Asia Limited (PMA) announced that it planned to sue the Gillard government for “billions of dollars in compensation” over the plain packaging legislation. As expected, PMA launched legal action a few hours after plain packaging legislation passed on November 21, 2011. The company said it planned to utilise a little-known investment protection agreement signed between Australia and Hong Kong in 1993. PMA’s suit came less than three months after the Gillard government released its trade policy statement, which ruled out the inclusion of ISDS clauses in any future Australian treaties.¹²⁶ The PMA claim maintains that Australia’s plain packaging legislation violates Australia’s substantive obligations in the Hong Kong – Australia BIT relating to expropriation and fair and equitable treatment, among others.¹²⁷ In addition to an overturning of the ruling, PMA is seeking billions of dollars in compensation, arguing, *inter alia*, that plain packaging would constitute an expropriation of its

intellectual property, which would, in its view, cost it very significant losses in terms of sales income. Moreover, PMA is claiming that plain packaging violates Australia's international trade obligations as a World Trade Organization (WTO) member, such as TRIPS, the Technical Barriers to Trade Agreement (TBT) and the Paris Convention for the Protection of Industrial Property (the Paris Convention). Legal experts who have critically examined these obligations have reached the conclusion that plain packaging falls within the scope of permissible regulation under the BIT as well as under the TRIPS Agreement, the TBT Agreement and Paris Convention Article 6 *quinquies* (B) *which is incorporated into Article 2.1 of TRIPS*.^{128,129,130,131,132} Plain packaging does not contravene the provisions of these agreements, and may in fact be supported by Article 8(1) of TRIPS which states:

“Members may, in formulating or amending their laws and regulations, **adopt measures necessary to protect public health** and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.”¹³³

The Doha Declaration also supports this clause and mentions public health as a viable exception.

The Australian Government's response to PMA's trade challenge, served in December 2011, reveals its assessment that PMA engaged in 'corporate restructuring' in an attempt to challenge plain packaging legislation.¹³⁴ As PMA acquired Philip Morris Australia some 10 months after the governmental announcement in relation to plain packaging, the Government claims it did not have an 'investment' in Australia as defined in the treaty and therefore was not protected by the treaty's investment protection provisions. "In such circumstances," the document explains, "(T)here could be no 'investment' for the purposes of Article 10 of the BIT and any reliance on Article 10 of the BIT would constitute an abuse of right. It follows that the arbitral tribunal lacks jurisdiction or that the claims that PM Asia now seeks to bring under the BIT are inadmissible."¹³⁵ Furthermore, the Australian Government contends that PMA's claim is "heavily dependent on...treaties over which an arbitral tribunal established under Article 10 of the BIT could have no jurisdiction". This statement refers to the tribunal that will be established under the 2010 United Nations Commission on International Trade Law (UNCITRAL) arbitration rules, which will rule on the dispute. The other 'treaties' that PMA is asserting plain packaging violates are Australia's WTO obligations. The ability of a multinational tobacco company to use WTO obligations to strengthen an investment claim depends on whether there are clauses in a treaty's investment chapter that incorporate law from outside the chapter, such as an 'umbrella clause' which in this BIT provides that "[e]ach Contracting Party shall observe any obligation it may have entered into with regard to investments of investors

of the other Contracting Party”. The Australian Government has assessed that “such claims are plainly outside the scope of protection of the BIT” and that the arbitral tribunal’s jurisdiction does not extend to obligations owed by Australia to other States under various multilateral treaties, which also contain their own dispute settlement mechanisms.

“It is not the function of a dispute settlement provision such as that contained at Article 1a of the BIT to establish a roving jurisdiction that would **enable a BIT tribunal to make a broad series of determinations that would potentially conflict with the determinations of the agreed dispute settlement bodies under the nominated multilateral treaties.**”¹³⁶

This assessment is corroborated by legal experts, who have ascertained that Australia’s WTO obligations are arguably not specific enough to PMA’s investment, the investments of Hong Kong investors, or foreign investment generally, to activate the umbrella clause. Nor, they maintain, does plain packaging contravene those obligations in any case.¹³⁷

In addition to this, Philip Morris International filed a lawsuit in Australia’s High Court, and has been joined by three other companies – BAT Australia, Imperial Tobacco Group and Japan Tobacco International.¹³⁸ Hearings commenced in April 2012.¹³⁹ In May of 2012, the Australian Government announced it would seek legal advice on a national class action lawsuit against tobacco companies to recover costs imposed on health budgets by smoking-related diseases, similar to the move made by states in the USA in 1997, which resulted in the massive \$200 billion US Master Settlement Agreement.^{140,141} Canadian provinces have filed similar lawsuits.¹⁴²

The Ukraine and Honduras filed a complaint in relation to the trade obligations discussed above in March and April 2012, respectively, and if consultations fail to resolve the complaint, judges of the WTO’s Dispute Settlement Body may hand down a ruling.¹⁴³ It was revealed that PMI and BAT are providing legal support to both countries.¹⁴⁴

2.6 Plain Packaging as a Necessary Public Health Measure

WTO trade rules such as the TRIPS Agreement include the underlying principle that a measure should clearly be shown to achieve its objective and that it be no more restrictive than is necessary to achieve its objectives.¹⁴⁵ One of the most relevant questions concerning the alleged TRIPS-incompatibility of generic packaging relates to Article 8(1) of TRIPS.

Any WTO member state seeking to adopt a measure (e.g. a public health measure) pursuant to Article 8(1) should prove *inter alia* that it is (i) necessary for the promotion of the public interest in sectors of vital importance (e.g. to protect human health) and (ii) consistent with the TRIPS Agreement.¹⁴⁶ Several WTO disputes illustrate this issue. For example, in 1998 the WTO and

the European Commission concluded that Canada's requested consultation against France, which had just prohibited the importation and sale of all forms of asbestos, was unwarranted. It stressed that the French measures were not discriminatory under the terms of international trade treaties, and were fully justified for public health reasons.¹⁴⁷

The crux of the issue is **necessity**. To what extent is the policy necessary for public health? The question is twofold. A causal link needs to be established between the measure and the protection of the specific public interest, but the measure should also be the least restrictive on intellectual property rights (IPRs). This requires that the country passing plain packaging legislation do the following:

- a) Produce a strong body of peer-reviewed evidence illustrating the causal link between the measure and the protection of public health; and
- b) Provide that no less restrictive means to achieve the policy goal exist.

A government should also create strong links between its obligations as a signatory to the FCTC and plain packaging legislation. Any cogent public health law, such as plain packaging of tobacco products, must thus take into account the legal issues raised here. It is important, however, that legal advocacy be enacted separately from public health advocacy for the measure. The two are separate issues, and conflating them may weaken the argument that a particular measure is necessary and effective. In the course of the legislative process one has the opportunity to build records and studies of public health which support plain packaging. Trade policy should not be afforded greater importance. It is simply the framework – public health is the true objective.

Chapter 3

The burden of tobacco: India's history of tobacco control legislation

3.1 Tobacco control legislation

India's history of tobacco-related legislation dates to the recent past and public policy. In recent years, public policy has changed in progressive and far-reaching directions. At the national as well as at the individual state level, initiatives have been taken to curtail some of the negative consequences of tobacco consumption. Tobacco control has become a key focus of the Government of India's agenda in recent years. The passage of the *Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA)* was a landmark in India's history of tobacco control. Specifically, India was one of the first countries to ratify the FCTC and even in its 11th Five Year Plan, there has been a significant allocation for publicity and awareness as a component of the overall allocation for tobacco control, and media reports suggest that the pictorial warnings alone were increasing inducements to quit smoking, based on GATS 2009-10.¹⁴⁸ **This Taskforce Report makes the argument that plain packaging, as an amendment to COTPA, would be an effective tool to help prevent further tobacco use initiation. Plain packaging will significantly boost and augment the Government of India's existing pictorial warnings. India has come a long way from textual warnings to pictorial warnings. The Government of India can meet its own public health objectives, amplifying the efficacy of pictorial warnings by moving to plain packaging of tobacco products.**

3.2 The burden of tobacco in India

More than one million Indian citizens die every year because of tobacco use. On the whole, mortality rates for smokers are 60 per cent to 80 per cent higher than for non-smokers; similarly, *bidi* smokers have higher death rates than non-tobacco users. In India, *bidi* smoking and the use of smokeless tobacco are common, and they account for a large proportion of tobacco-related cancers of the oral cavity, pharynx and the oesophagus. It is possible to derive the effects of tobacco consumption on mortality per se by referring to a number of longitudinal studies done in India.¹⁴⁹ In particular, *bidi* smoking and the use of smokeless tobacco are as critical as cigarette smoking. *Bidi* smokers have higher levels of all-cause mortality and on the whole, these findings suggest that the burden of tobacco in all its forms requires urgent public health intervention efforts. Recent data from *The Tobacco Atlas* showcase **how much the tobacco habit costs to the nation. For example, the Planning Commission states that revenue collected from tobacco products annually in India is \$1.62 billion (largely coming from taxation of cigarettes), while the annual direct health cost of three tobacco-related diseases (cancer, coronary artery diseases and chronic obstructive lung diseases) is \$6.32 billion.**¹⁵⁰ Clearly, this gross mismatch needs public policy interventions.

3.3 Indian tobacco control legislation: the move to pictorial warnings

The last decade, in particular, has witnessed a number of legislative shifts beginning with some key Supreme Court and state High Court judgments which galvanised public policy in the direction of curtailing tobacco use. **The passage of COTPA is one of the most important public policy shifts witnessed in the arena of public health in India.** The Central Government's lead was emulated by various states even as the judiciary's rulings played a key role in galvanising the tobacco control movement.¹⁵¹

The passage of COTPA represented a major step forward to integrate textual and pictorial warnings. This legislation was the fruit of a decade of efforts and required significant groundwork in advance. COTPA was finally passed in May 2003. Key provisions in the Act included the following:

- The requirement of legible and conspicuous display of pictorial warnings including pictorial warnings with the text of the warning to be in the same language as that used on the package (Section 7)
- Direct and indirect advertisements of tobacco products except at Point of Sale and on tobacco packages were prohibited (Section 5)
- Gifts, prizes, scholarships or sponsorships of sports or other cultural events using the trademark were prohibited
- Clear indication of tar and nicotine content, as well as the maximum permissible limits as per the Rules prescribed under this Act were required
- Various prohibitions on the sale of tobacco to and by minors, the prohibition of the sale of tobacco within a 100-yard radius of educational institutions, and the prohibition of smoking in public places were instituted

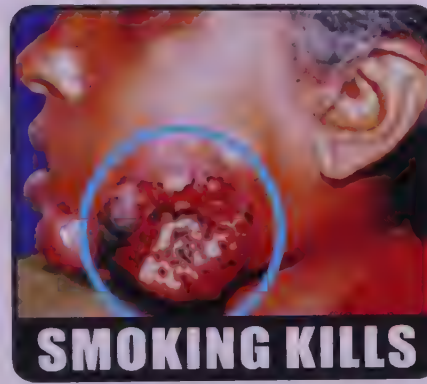
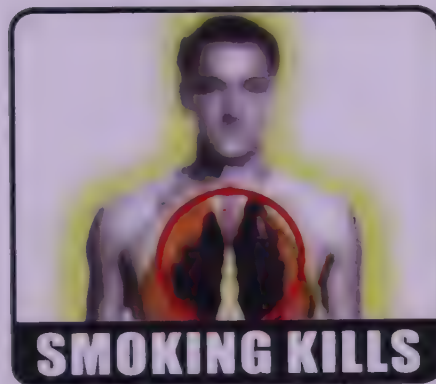
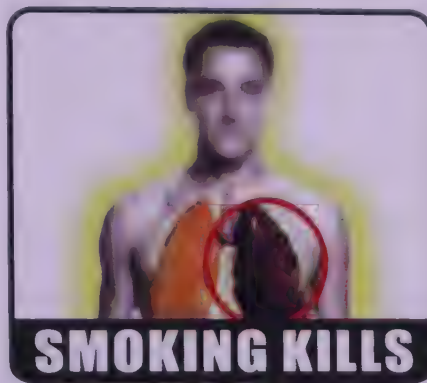
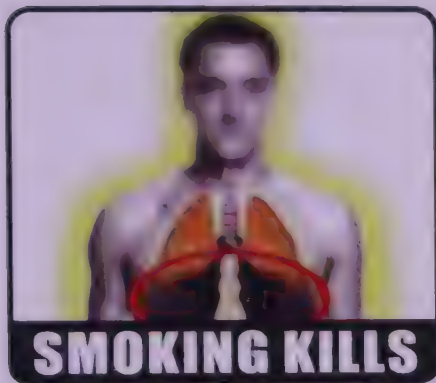
However, the enforcement of Section 7 of COTPA, on the requirement for pictorial warnings for all tobacco product packages, was longwinded. When a citizen filed a Public Interest Litigation (PIL) in July 2006 before the High Court of Himachal Pradesh, the Government of India was stirred into action and moved to notify rules to enforce this Section of COTPA. The tobacco industry delayed implementation of this by piling up litigation across the country and, in particular, challenging the constitutionality of the rules notified. Only in May 2009, following a Supreme Court order, was Section 7 finally implemented.¹⁵² To help implement COTPA's requirements for pictorial warnings, the Ministry of Health and Family Welfare engaged an NGO, HRIDAY, to develop effective pictorial warnings.

The Ministry selected a number of field-tested pictorial warnings, which included the skull-and-crossbones symbol, and notified these in July 2006, to enter into force from February 2007. This met with significant opposition from the *bidi* industry and in response, the Prime Minister set up an empowered Group of Ministers to examine the matter. The Group of Ministers diluted the

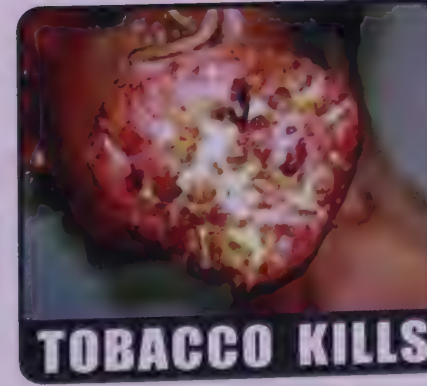
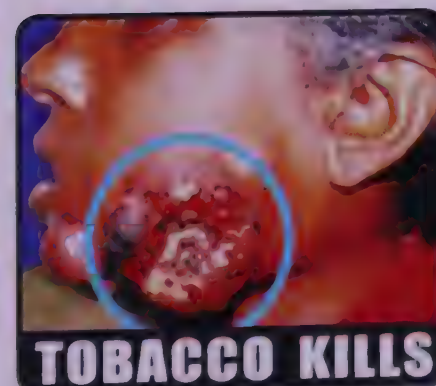
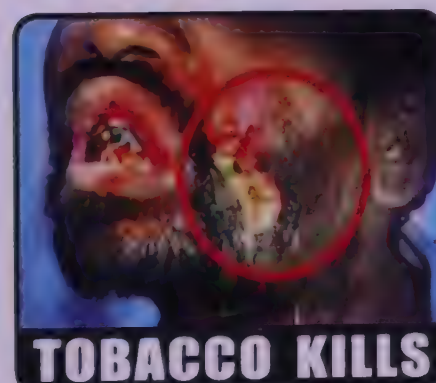
recommended use of the skull-and-crossbones symbol and in a subsequent meeting revised the pictorial health warnings, which had not been field-tested, and also reduced the principal display area for the warnings from 50 per cent to 40 per cent of the front panel of the pack. These revisions were officially notified in May 2009.

In March 2010, however, the Ministry of Health and Family Welfare notified a new set of field-tested pictorial warnings containing images of those suffering from oral cancer, which was meant to replace the earlier warnings and to come into effect in June 2010. On account of industry pressure, the introduction of the warnings was delayed until December 2010. Just before this, during the India International Trade Fair in November 2010, the Public Health Foundation of India and HRIDAY exhibited the range of pictorial warnings and sought public opinion about which were perceived as particularly effective. In addition, they gathered 13,000 signatures in support of pictorial warnings. Wide media and public support alarmed the tobacco industry, which shortly thereafter announced the closure of production in factories and published the loss of revenue incurred per day to the exchequer.¹⁵³ The result of this was that the government revised the rotation of the pictorial warnings from the existing 12 months to 24 months and the implementation of pictorial warnings was delayed until May 2011. In May 2011, the Ministry notified the following series of images to come into effect from December 2011.

For use on smoking forms of tobacco packages, the following four images have been notified but unfortunately the most innocuous of these are presently in use:



The following images were notified for display on smokeless forms of tobacco:



3.4 Conclusion

Plain packaging requires the manufacturers of tobacco products to substantially tone down misleading branding activity. It helps consumers of such products to focus on the reality of the dangers of the product through the accentuated effects of pictorial warnings. This is particularly relevant for India's largely poor and illiterate tobacco-consuming population. Many of India's tobacco consumers are completely unaware of the dangers of tobacco products.

In India, tobacco consumption is inversely related to socio-economic status: the smoking and chewing of tobacco is systematically connected with socio-economic markers at both the individual and household level. Those with no education are up to 2.69 times more likely to smoke and chew tobacco than those with a post-graduate education.¹⁵⁴ Pictorial warnings thus help to bridge the information gap by providing poor and illiterate tobacco users with reliable information about the ultimate health consequences of tobacco usage, and possibly compel them to quit. Plain packaging will help this by reducing the impact of external packaging and highlighting the dangers of tobacco consumption by amplifying the pictorial warnings.

The case may be widened to view tobacco control as an enabling measure to protect the human rights of sub-sections of the Indian population which are more vulnerable to tobacco use, for instance the poor, women and children.¹⁵⁵ In this context, plain packaging, which amplifies the effects of pictorial warnings, plays a key role in enabling these individuals to make a fair, free and informed choice. Pictorial warnings can provide clear and credible information about the damaging effects of tobacco consumption.

Plain packaging **bridges the information gap** between the perception and the reality of the health effects of tobacco products, especially for India's largely illiterate tobacco-consuming population, **helps reduce initiation** into tobacco consumption and can **help accentuate** the Government of India's overall public health policy goals.

Chapter 4

Bringing plain packaging to India

4.1 Stakeholder consultations with policymakers and market research

To be successful, a policy intervention must account for the international, socio-economic and domestic ecosystems within which it will be situated. Even though plain packaging is clearly a tobacco control-specific policy initiative, it will affect a number of other areas and needs to be tackled thoughtfully. To account for the complex environment of tobacco control in India, a stakeholder consultation with various experts was undertaken to enrich, guide and optimise this policy initiative. This stakeholder meeting had three core objectives.

First, the priority was to **delineate** the landscape of policies – legislative, politico-economic, international agreements and treaties and so on – that could have a bearing on such an initiative. These would therefore need to be taken into account. This part constituted stakeholder mapping. Second, based on the above, the next step involved **sharpening and isolating key questions** and issues that had to be addressed. This would help the Taskforce to anticipate and overcome the challenges that might be encountered. The third step sought to get the experts to help answer the questions raised in the previous step, and therefore **identify the sort of data and/or evidence** that would need to underpin the prescriptive recommendations that this Document makes to policymakers in the Government of India. The way forward in India would require building a case on normative grounds, the grounds of evidence, and on the grounds of precedent to make compelling arguments for plain packaging. This Stakeholder Consultation utilised a workshop format to help outline a framework for the steps needed to help the Taskforce develop and disseminate a document that would inform and guide policy change.

With the issue of tobacco packages as agents of promotion gaining momentum all over the world, there was a need to assess the perceptions of the Indian population about plain packaging for all classes of tobacco products. Market research was needed to gauge the level of public support for plain packaging. This would constitute important evidence to present to the Government of India if it were to mandate plain packaging for all tobacco products in India, under the ambit of Indian tobacco control laws. To this end, HRIDAY undertook market research with three key objectives:

- to explore the perceptions of Indians about plain tobacco packaging as compared to the currently existing packages with pictorial health warnings;
- to gauge their support for plain packaging as a policy intervention in the Indian context; and
- to conduct a stakeholder analysis with multi-sectoral government and non-government personnel to assess challenges and opportunities in the enforcement of plain packaging for tobacco products.

This evidence is presented in Chapter 5.

To summarise, the stakeholder consultation and the market research integrate a wide range of perspectives about the viability and the feasibility of plain packaging in India in today's scenario.

4.2 Plain packaging and international obligations

India has signed more than 60 BITs, multilateral treaties and FTAs with varying definitions of investments which dictate the acquisition and use of intellectual property. This indicates that any proposal for plain packaging regulation will be met with claims by the tobacco industry of loss of revenue and entitlement to compensation due to the deprivation of use of acquired intellectual property. In anticipation of such claims, the Taskforce recommends that any legislative intervention require careful analysis of all the treaties and agreements India has entered to come up with an all-encompassing definition of 'investment'. This would require careful legal analysis. If changes in these definitions in the various BITs or FTAs are required to accommodate the plain packaging measure, India would need to engage these trading partners to make the appropriate changes in these agreements.¹⁵⁶ This may or may not be a straightforward exercise. An attempted expropriation can require compensation according to the fair and equitable treatment clause of such investor agreements. Typically, an 'umbrella clause' will allow investor-state arbitration which would then allow other companies to sue India. Currently, law-makers would need to check whether the bilateral treaties India has signed provide health exceptions. Typically, survival clauses in bilateral treaties state that in the event of investor-state disputes, where a treaty is terminated without mutual consent, investments made enjoy the status quo for between 10 and 15 years, depending on the specifics of that treaty's survival clause. Since India has already signed a number of bilateral treaties, these should be studied *before* plain packaging legislation is drafted. Specifically, these bilateral investment and various international trade treaties would need to be studied closely for exemptions. This exercise would ensure that they do not hamper or undermine the core objectives of the plain packaging regulation.

The negotiations on the India-EU free trade agreement, as one example, had the EU pushing for achieving zero tariffs for a very large percentage of India's imported goods.¹⁵⁷ This could have created difficulties for India to maintain stringent tobacco regulations since only about 10 per cent of all imported goods could have been excluded from steep tariff cuts. Importantly, any plain packaging policy should not provide exemptions to any countries or sectors to avoid any accusations by tobacco companies of 'unfair treatment'. As a WTO member, all Indian legislation needs to be in consonance with existing WTO commitments.

4.3 Plain packaging and Indian trademark rules

Tobacco firms can be expected to make claims basing their rights in terms of the Indian *Trade Marks Act* 1999. As in Australia, the Act provides for negative rights which these firms can use to *prevent* the illicit use of their registered trademark. However, the Act has no provision for 'positive rights', which may equip a company to use the trademark wherever and however it decides. In particular, Section 11 of the Trade Marks Act provides that a trademark cannot be registered if it violates an existing law and no form of any tobacco product can be given preferential treatment in this process. The most common argument that the tobacco industry has been known to use against tobacco control measures on their packs is that their product packaging is a **right** that they possess to use as they see fit. Fortunately, India gives the right to trademark use as a negative right – which means that no-one else can use a copyrighted trademark. The right does not however, give the copyright holders a right to use their trademark wherever they see fit, including on their own products. Legal experts suggest that it is possible to use specific provisions in the Trade Marks Act to extend a law banning trademarks to all tobacco products. In a similar vein, the Government of India possesses the right to rescind old patents which have been found to be retrospectively violating rules and laws. For example, the brand Shivaji Bidi was registered in 1928, but it was cancelled under Section 8 of the *Emblems and Names (Prevention of Improper Use) Act* 1950. The Government of India can overrule anything it finds harmful to the people's sentiments.¹⁵⁸

The establishment of International Non-proprietary Names (INNs), which consign the generic names of medicines to the public domain is another step that can be taken for preventing the use of trademarks. It will be necessary to ensure an impartial inclusion of all tobacco products. For example, the Maharashtra Government attempted to ban *gutka* on the grounds of it containing certain tobacco ingredients. However, the opposition established a claim that chewing gum required the same ingredients, so the ban was unfair to the *gutka* industry as a whole.

4.4 Cash economics and standardization of packaging

The issue of counterfeiting and illicit trade needs to be considered from the point of view of existing realities. For example, *gutka* and *khaini* constitute 90 per cent of the entire tobacco market of the country. Recent scholarly estimates suggest that as much as 44 per cent of Indian *bidis* and between 11 to 14 per cent of all cigarettes are illicitly traded.¹⁵⁹ The production model of the sector is largely labour-intensive, and firms are unorganised and cash-rich. While there is no established method of standardising labour in these industries, the largely cash transaction-run business model of this informal sector enables multiple layers of hidden cash flows, making it very difficult for law enforcement authorities to detect these activities. In fact, when the FCTC was first drafted, an apex industry association representing the *bidi* firms sent a letter to the Government of India stating why the regulation would be ineffectual in monitoring the *bidi* industry. It is quite possible that in response to proposed plain packaging legislation the *bidi* industry, and involved elements, may well organise and oppose this measure. In fact, packaging is almost non-existent in the rural *bidi* market. This brings us to the issue of standardised packaging.

Since Indian tobacco products are sold in packs of different sizes, shapes and quantities, what India requires, unlike Australia, is not only plain packaging, but the *standardisation* of packaging within product categories. Since cigarette packages are produced for sale in packets containing 10 and 20 cigarettes, this itself is a challenge to regulation. In reality, many smokers simply buy exactly the number of cigarettes that they want on the basis of a cash payment to a street corner *paan* vendor. Similarly, very small packages of *gutka* make product standardisation difficult. Thus, insisting on product standardisation – and perhaps enabling the introduction of packages of 20 cigarettes uniformly across the country, and increasing the minimum size of *gutka* packages -- should indirectly assist in the overall tobacco control effort by making them relatively more unaffordable for those who are poor and even for children.¹⁶⁰ Given that *bidis* are so widely consumed in rural areas, implementation of plain packaging regulations will be challenging.

4.5 Planning and strategizing

Political strategy will impinge on deciding which laws will need to be amended and why and which ministries would need to initiate this. **Significant inter-ministerial buy-in at the highest level is essential, and all tobacco and tobacco-containing products would need to come under the purview of plain packaging legislation.** Plain packaging legislation would primarily concern the Ministries of Health and Family Welfare, Law and Justice, Agriculture, Commerce and Industry, Finance and Labour. The Health Ministry alone could make a convincing case for the relevance of the legislation but it would require a joint effort from all these ministries. The Ministry of Health and Family Welfare could use this opportunity to propose more effective pictorial warnings on plain packaged tobacco products. This would require an analysis of plain packaging legislation and the implied repercussions for every sector and industry under each ministry's purview.

The Ministry of Health and Family Welfare is best positioned to devise a Plan of Proceedings which allows adequate time to implement the law effectively. An ‘all-ministries meeting’ will be crucial to mapping a way forward for tobacco control in India. This is an opportunity for the Government of India to strengthen existing packaging and labeling rules without any extra effort or cost.

Civil society advocacy needs to start early to assist the Government of India in this endeavour. Civil society organisations involved in tobacco control in India need to connect with the grassroots in building public interest and support and engaging stakeholders who could otherwise be manipulated by the tobacco industry. A bottom-up approach is critical for upgrading India’s tobacco control laws. Just as civil society in Australia worked to prepare a consensus for bringing in plain packaging measures, this is a unique opportunity for Indian organisations to share best practices with the Government of India to help move towards plain packaging.

There are three viable approaches to secure plain packaging: One track is to push for a steady increase in the size of pictorial warnings on packs which could eventually lead to plain packaging (such as in Australia), while the other could straight away push for standardisation of all packs across products. Finally, a third track could advocate for a ban on all Point of Sale promotions including via package surfaces.

Plain packaging should be enforced across all tobacco products in the market to prevent allegations of discrimination. The feedback from the stakeholder consultation suggested that the most important focus should be on the *bidi* industry. Additionally, smokeless tobacco in its various forms is used by a majority of tobacco users in the country.¹⁶¹ The government also can designate a dedicated in-house legal team in addition to ensuring its own robust legal case.

Since there is a range of stakeholders with differing interests in the emerging debate, a number of approaches will be necessary. Retailers will be the most challenging and yet most strategic participants to build alliances with, as they are vulnerable to tobacco industry fear-mongering and loss of revenue from Point of Sale promotions. **The Indian judiciary is also of paramount importance – the courts have led tobacco control reform in the country.** Plain packaging is likely to emerge in India via the same route, therefore sufficient research is necessary to be prepared for litigation. Legal research to identify all relevant sections of COTPA with implications for plain packaging and a legal strategy for policy development will be useful. Further legal research to identify other laws with implications for standardised packaging such as consumer laws, trademarks laws, intellectual property laws, trade and investment treaties and the ways and means of reconciling them would be important steps to take.

Plain packaging can lead to the highlighting of existing pictorial warnings on tobacco packages in addition to reducing the scope of advertising and brand recognition. If the pictorial warnings on the packs are feeble, as they currently are, branding will continue to dominate the package. Therefore, the case for stronger pictorial warnings also needs to be made. **One key goal of tobacco control is that all tobacco products should have plain packaging, reducing the chances of uninformed decision-making among those aged 18 and above, and ultimately resulting in lowered sales of tobacco products.** Indeed, if civil society is to assist the government in this effort, it is important for a core community of legal advisers and civil society to come together.

4.6 Plugging existing loopholes

While Section 5 of COTPA imposes a ban on all types of descriptors, it does not prohibit brands from advertising on the package. As in other parts of the world, tobacco companies have found ways to use colour coding and branding to differentiate products directed at different market segments. The Government of India might consider amending COTPA to both extirpate the provision of direct advertising on the package and clarify the definition of ‘indirect advertisements’.

Law enforcement is of paramount importance for such health measures to be effective. The Central Government can enact laws; in general, enforcement is the role of the state government. At the local level, immediate health concerns like treatment of diseases caused by tobacco use are of greater and more immediate concern than tobacco use *per se*. So to effectively enforce COTPA and other tobacco regulations, the following are important:

- **Political will: inclination of the state governments to commit to tobacco control**
- **Strict reporting and monitoring of violations**
- **Availability of an online facility for reporting violations with a dedicated website**
- **In-depth studies of the demographics, psychosocial and other behavioural patterns of tobacco users, quitters and susceptible populations**

The best way forward is to amend the existing laws instead of bringing out new laws. An amendment on packaging stipulations should simultaneously consider a complete ban on Point of Sale advertising for consistency. Both Sections 5 and 7 of COTPA should be kept in mind while pushing for amendments. There are additional laws such as the Trade Marks Act and various consumer laws that need to be reconciled to facilitate the implementation of standardised packaging.

4.7 Collecting evidence

Sound information on the effectiveness of plain packaging on tobacco consumption would enable the Ministry of Health and Family Welfare to make a convincing case for plain packaging at the level of Parliamentary inquiries and debate. In Parliament, questions about the attempts of other countries will be raised. It is therefore crucial to tread a logical path of restrictive measures that pave the way for a law of this nature. As noted in previous chapters of this Document, the experiences of various countries should prove helpful for readers and those in the world of policymaking to make this assessment.

The broader public could be involved in providing evidence for the case for plain packaging. For instance, documentaries already made by NGOs about *bidi* labourers and their plight might prove to be a valuable tool against the tobacco industry lobby. According to civil society stakeholders, clear evidence needs to be collected in the following key areas:

- The *effects* of plain packaging in reducing events of experimentation and initiation among young people and encouraging users to stop
- The perceived efficacy of plain packaging as a deterrent to tobacco consumption
- The response of stakeholders and their understanding of the value that plain packaging may lend to the larger cause of tobacco control
- The effect of Point of Sale displays on initiators, quitters and regular tobacco users, differentially
- The size of pictorial warnings and the side of the package on which it appears.
- Whether consumers or retailers will find it harder to identify different brands if all tobacco packs are standardized
- The cost implications of standardised packaging for small and large businesses across products

As a policy, plain packaging cannot be announced overnight. **Intense preparatory work, including legal and legislative research, inter-ministerial consultations, stakeholder sensitisation, alliance-building, and garnering public opinion will need to take place in a planned and systematic manner to counter industry opposition.**

According to the *Global Adult Tobacco Survey India Report of 2009-10*, 9 per cent of the Indian tobacco-using population smokes; it is the other products (like *bidis* and *gutka*) that a majority uses. The data generated from the Taskforce's market research and opinion poll results are important to support the case of plain packaging in India and will counter any false tobacco industry challenges

on the relevance of plain packaging in the Indian context or with varied Indian tobacco users. A more holistic understanding of the kinds of tobacco products available across India is necessary. This should include the differing kinds of existent packaging, the physical aspects of each product (size, shape and other such parameters), and the different kinds of tobacco products sold in India. Studying the best practices of standardised packaging in other comparable consumer products and mapping these to Indian tobacco products will also prove useful.

4.8 Practical aspects of plain packaging in India

A number of challenges to the requirements for standardised packaging can be anticipated: the tobacco industry will stake proprietary rights over the package space and will claim that plain packaging may make brand differentiation and identification difficult for consumers and retailers. There could be a range of technical challenges in displaying standardised packaging across diverse products. **As in Australia, the tobacco industry can be expected to claim an increase in tobacco smuggling to challenge the efficacy of the policy.** In India, a multiplicity of languages, regional variations of products and languages and interstate movement-related issues pertinent to the sale of tobacco products will be brought up. The industry might invoke the issue of the high degree of variation in the size of the products and packs, and loose sales, sales in 'kiddy packs' and even bring in opposition by rallying tobacco growers, *bidi* rollers and retailers against the move towards plain packaging. In sum, a range of stakeholders in the tobacco sector needs to be engaged. This will help in anticipating and dealing with the range of concerns that may be raised concerning plain packaging in India. Retailers, the healthcare sector, victims of tobacco use and their families, the Indian judiciary, the academic community, and the ministries of External Affairs, Health and Family Welfare, Agriculture, Labour, Commerce and Industry and others and UN organisations can be one set of stakeholders.

4.9 Advocacy

In terms of process, clear advocacy is needed for plain packaging as part of comprehensive tobacco control measures in the country, and applicable to all tobacco products. Advocacy for standardised packaging must secure better pictorial warnings. If variations of the 'nanny state' argument are raised against the Government of India, civil society should help by collating evidence and data to show the relevance of plain packaging and its effects on the sale of tobacco to the public. Complete support and coordination is necessary on the part of both civil society and the Government of India if any improvement on the present scenario of tobacco control measures is to be expected. In addition, civil society can provide supportive action by going public with evidence, engaging in media and advertising campaigns in support of the Government's policy, engaging in media debates and rallying support to help get victims of tobacco use to speak up and organise community support actions.

4.10 Conclusion

Key lessons emerge in terms of strengths, weaknesses, opportunities and threats that crystallize the core ideas of this chapter.

Strengths

India is facing a huge crisis on account of tobacco consumption, which makes for a very compelling public health argument to support plain packaging. **India has approximately 275 million tobacco users, and about one million Indians die each year from smoking alone.** Ten per cent of the world's tobacco smokers live in India, and Indians are the second largest group of smokers in the world after China.¹⁶² Given that India is also the second largest producer and consumer of tobacco products in the world, this trend will be a difficult one to slow down. **Despite these stark realities, the Government of India legislated COTPA, and was a key driver for the WHO's FCTC negotiations and one of the first countries to ratify the FCTC.** Both key milestones were reached in 2003. India also has its own National Tobacco Control Programme (NTCP). This demonstrates the serious intent of the Government of India to tackle the tobacco epidemic at the national, state and district levels. Additionally, at the state level, several states have taken key initiatives in banning tobacco in various forms – Sikkim, Maharashtra and Goa have already taken strong legislative steps with Sikkim completely banning public smoking in May 2010. At the level of individual cities, Chandigarh and Shimla have made attempts to declare themselves 'smoke free' – in short, there is a growing change in **the overall policy environment militating against tobacco consumptions in various ways.**

Weaknesses

Multiple government agencies regulate a diverse array of tobacco products. The Ministry of Health and Family Welfare is the only ministry responsible for attempting to decrease and minimise, if not actually curb, tobacco consumption, but a number of other ministries of the Government of India actually encourage tobacco production, for a variety of reasons which are beyond the scope of this Document. From the Taskforce's explicit public health perspective, this is a fact that must be acknowledged. At the administrative level, as well, the sheer number of overlapping Government agencies at various levels makes for complexity in terms of implementation.

The tobacco industry will raise as a hurdle technical challenges (and additional cost considerations) **in the display of standardised packaging.** This will be even more difficult to implement across diverse products. Further, with India's multiplicity of languages, regional variations of products and interstate issues pertaining to the sale of tobacco products are also likely to be raised. However, the Taskforce feels that precedent exists for overcoming this. **These challenges can be addressed** as they have been in the arena of pictorial warnings.

Opportunities

This is the right moment for the Government of India to amend COTPA, especially Sections 5 and 7. Specifically, the extirpation of the provision of direct advertising on the package and a clarification of the definition of ‘indirect advertisements’ would be useful. Tobacco regulation is increasingly a priority for public health advocates all over the world, and plain packaging is garnering significant attention as a viable tobacco control policy.

Introducing plain packaging is an opportunity to **move towards central regulation** of tobacco products in India and in terms of COTPA. Some state governments have a high degree of political will, such as Bihar, where the state government was shocked to learn that its citizens’ tobacco consumption was 53.5 per cent against the national average of 35 per cent. The State has since expressed a desire to set up anti-tobacco squads whose purpose would be to ensure the enforcement of COTPA, especially the prohibition of sale of tobacco products to children.¹⁶³ **These states could be enlisted to build a ‘coalition of the willing’** to educate Members of Parliament, as they have demonstrated a greater commitment to tobacco control.

The Government of India can use this opportunity to begin creating technical infrastructure to help in strict reporting and monitoring of violations by creating a transparent online facility for reporting, tracking and tracing violations with a dedicated website. An additional advantage is that this will help comply with Article 15 of the FCTC Protocol (Tracking and Tracing)¹⁶⁴.

Threats

As has occurred in Australia, **the Indian tobacco industry can be expected to claim an increase in tobacco smuggling or counterfeiting issues.** In India, these arguments will be given extra weight because of the fact that there is a high degree of loose cigarette sales. However, policymakers should take inspiration from countries such as Colombia, which recently banned the sale of loose cigarettes, to take a hard-line approach to such structural issues.¹⁶⁵ In this context, the tobacco industry could even organise opposition by instigating tobacco growers, *bidi* rollers and retailers against the move towards plain packaging as it affects their economic interests. It will be prudent for the Government to calculate the savings in both private and public healthcare costs if tobacco consumption is reduced, as it will outweigh tax revenue, and can be used to counter this argument.

Definitions of investments and other terms in treaties such as BITs will require careful analysis since they define investments in different ways. This is absolutely necessary to understand how BITs or FTAs and other international investment agreements may be required to accommodate the plain packaging measure. India may need to diplomatically engage these trading partner governments, which could be a very complex exercise. Looking forward, there is already evidence that senior bureaucrats in the Ministry of Commerce are aware

of the dangers of clauses that permit private parties to draw a sovereign state into commercial disputes.¹⁶⁶ Recent reports regarding the India-European Free Trade Agreement witnessed the EU seeking to achieve zero tariffs for 90 per cent of India's imported goods. One clause in that context could have been problematic for tobacco control advocates. The reason for this being that if the Agreement was passed – talks on this Free Trade Agreement have stalled at the time of the drafting of this Document – and for India to maintain its stringent tobacco regulations, only about a small percentage of goods imported from the EU *could* have been excluded from steep tariff cuts. Given India's growing economic clout, and its negotiating skills with powerful international economic actors, the issue of investment clauses in trade agreements *may not* be as difficult as it appears to be.¹⁶⁷ But the existing reality is that all Indian investment agreements, except for four comprehensive economic cooperation agreements that have a chapter on investment, make India open to contestations by tobacco companies if plain packaging legislation or measures were introduced by India. The reason for this is that Indian international investment agreements contain very broadly formulated investment protection provisions with limited general exception clauses.¹⁶⁸ A study of how terms such as 'expropriation', 'umbrella clauses' and 'health exceptions' in such treaties are actually framed therefore does need careful legal analysis. This can raise sensitive and complex diplomatic issues beyond the control and mandate of the Ministry of Health and Family Welfare.

In addition, India will need to review its obligations as a WTO member and ensure that any plain packaging measure introduced in the country is constructed with evidence illustrating that it is necessary for public health. Given the dire situation of the tobacco epidemic in India, and the countless studies supporting the effectiveness of plain packaging, this case will not be difficult to make.

The basic production model of the tobacco market makes enforcement problematic because a large part of it is unregulated. Specific products have different degrees of organisation – *gutka* and *khaini* producers are highly unorganised. These products constitute a majority of the tobacco market of the country. They would need to be covered by the plain packaging measure. If plain packaging is to be effective, these realities will need to be considered seriously.

Specifying standardisation in packaging of tobacco products could face certain challenges but can also be viewed as a crucial tool in favor of tobacco control. It must be acknowledged that Indian tobacco products are sold in a large range of sizes, shapes and quantities. It is possible that the unorganised sector of tobacco manufacturers may argue that the standardisation of packaging is difficult for a number of reasons. But the government can use this creatively to help deter consumption of tobacco products. For example, the government can administratively require a higher number of cigarettes per package. This would have the effect of increasing the cost of the product and perhaps deter consumption.

Moving towards plain packaging is an opportunity to push for the standardization of packaging of all tobacco products. COTPA has already clearly defined the sizes of pictorial warnings for existing tobacco products – both tobacco that is smoked and not smoked. Thus, useful precedents exist. Nevertheless, the problematic nature of this challenge in the Indian context needs to be acknowledged.

SWOT Analysis

Strengths <ul style="list-style-type: none"> • Commitment to tobacco control through policy, legislation and programmes. • The overall domestic and international policy environment is shifting against tobacco use 	Weaknesses <ul style="list-style-type: none"> • Multiplicity of implementing government agencies, with opposing mandates • Technical challenges and cost issues in the display of standardized packaging
Opportunities <ul style="list-style-type: none"> • Use this initiative to push through amendments to Sections 5 and 7 of COTPA • Create technical infrastructure for tracking and tracing; and, comply with international best standards • Lead the way for developing countries to reverse the deadly tobacco consumption trend 	Threats <ul style="list-style-type: none"> • Tobacco industry claims of increased illicit trade/smuggling and losses in exchequer revenues • Definitions in bilateral and multilateral investment and trade agreements may pose a challenge • Lack of integrated command and control of the production-to-sale life cycle of tobacco products.

Key points emerging from the Stakeholder Consultation

International Treaties	<ul style="list-style-type: none"> • All Indian BITs/investment treaties for exceptions and exemptions • The 'unfair treatment' argument will not hold water as long as a plain packaging policy exempts no country or sector
Domestic legislation	<ul style="list-style-type: none"> • India must publicly recognise that tobacco is bad for health and that the goal is to significantly reduce tobacco use prevalence • Existing provisions in existing laws can be used to extend a law debaring trademarks on all tobacco products
Overall...	<ul style="list-style-type: none"> • All tobacco products must come under the purview of plain packaging legislation • The Ministry of Health and Family Welfare is best positioned to provide leadership and engage other Ministries through the entire cycle of conceptualizing the strategy until piloting legislation to Parliament

Chapter 5

Assessing the Indian socio-political scenario for plain packaging of tobacco products as a policy intervention

5.1 Background

The WHO FCTC, through Article 13, emphasises the importance of undertaking prohibitive measures on tobacco advertising, promotion and sponsorship (TAPS) in order to contain the global tobacco epidemic.¹⁶⁹ With increasing restrictions on tobacco advertising and promotion globally, internal documents from the tobacco industry suggest that tobacco packs are especially valued by the industry as a means to promote their product to existing users as well as potential users.¹⁷⁰

The tobacco companies utilise misleading brand imagery such as brand descriptors (light, mild, ultra-light) and pack colours (lighter shades such as light blue and white to signify milder product and dark shades such as red and dark blue to signify stronger product).¹⁷¹ Such misleading brand imagery has the potential to distract attention from the pictorial health warnings and messages which are imprinted on tobacco packs.¹⁷² Evidence also highlights that the use of colour, fonts, images and trademarks on tobacco packs is associated with the identity and personality of the user; these are therefore known as ‘badge products’.¹⁷³ It is noteworthy here that three key groups are being targeted by public health experts to curtail tobacco related harms: current smokers, former smokers (who want to remain non-smokers), and non-smokers at high risk of taking up smoking.¹⁷⁴ Evidence collated from industry documents reveal that tobacco packaging is directed primarily towards these groups. Repeated display of tobacco packets in social situations among both past-users and non-users is known to promote tobacco consumption norms within a social context.¹⁷⁵

Research highlights that in developed countries such as Australia and the United Kingdom tobacco companies experiment with producing more colourful packs, designed to stimulate curiosity among potential users.¹⁷⁶ British American Tobacco (BAT) Australia experimented with its trademark design which led to introduction of the split Dunhill packs (so-called ‘kiddy packs’) in 2006.¹⁷⁷ This led to a subsequent rise in consumption among previously low user groups as they could easily procure and split apart a single pack for their own use.¹⁷⁸

Also, to dilute the effect of graphic health warnings, certain brands instigated the incorporation of these warnings into the overall colour-scheme making them blend with the tobacco packs.¹⁷⁹ Moreover, increasing attention is being levelled at brand promotion at the Point of Sale. Tobacco packs are being specially designed to create displays which are beguiling to youth and promote tobacco consumption among non-users and past users by standing out at cash counters.¹⁸⁰ As a measure to counter such industry tactics, plain packaging is being proposed as one of the possible interventions in some of the developed

countries.¹⁸¹ Following the introduction of plain tobacco packaging, it is expected that brand image communication strategy would be diluted and the use of brand imagery such as colours, corporate logos, trademarks and misleading descriptors would be prohibited.¹⁸² Manufacturers would be permitted to print required health warnings and other legally mandated information such as toxic constituents, tax seals or pack contents together with the brand name in a mandated size, font and location.¹⁸³

So far plain packaging of tobacco packs has been denied the status of an important tobacco control measure because of widespread and much-expected opposition from the tobacco industry which claims that plain packaging violates laws and international trade agreements and that the measure will not be effective in reducing the prevalence of smoking.^{184, 185} As evidence from developed countries accumulate, there is a renewed interest, especially in Europe and Australia, in plain packaging of tobacco products. Recently, Australia, which has been a forerunner in tobacco control, announced mandatory plain packaging on all cigarette packs from December 2012.¹⁸⁶

Countering the arguments of public health experts, the tobacco industry reports that the market of counterfeit tobacco products is growing. In the UK, 'cheap whites' the largest consumed brand of counterfeit cigarettes, represent more than 90 per cent of all large cigarette seizures from 2008-09.¹⁸⁷ These cigarette brands are legally manufactured in certain countries, but illegally marketed in some other countries. Thus, the industry argues that plain packaging would prove to be counter-productive as it would not only dilute the distinction between counterfeit and genuine brands but also reduce the price of illicit tobacco.¹⁸⁸

Some researchers support the evidence from the tobacco industry that highlights that white tobacco packets serve as drawing canvases for youth to design individualised cigarette packs thereby popularising them among this age-group.¹⁸⁹ A few studies from Spain and Canada reported that plain white packs are perceived to be more attractive by young people (particularly teenage girls in Canada) than brown or grey packs.¹⁹⁰ Alternatively, plain packaging advocates argue that comprehensive bans on ubiquitous TAPS from television, sports-sponsorships, bill boards, and print media gives the tobacco pack a critical advertising value.¹⁹¹ Furthermore, evidence indicates that plain packaging may enhance existing tobacco control policies and programmes and increase the effectiveness of pictorial health warnings, especially for young people.¹⁹²

India occupies a unique position, being the second largest producer and consumer of tobacco products in the world,¹⁹³ with wide availability of myriad varieties of tobacco products (including smokeless forms, the consumption of which is more prevalent) and great cultural diversity. Section 5 of COTPA prohibits both direct and indirect advertisements of cigarettes and other tobacco products.¹⁹⁴ Simultaneously, Section 22 of COTPA provides for penalties to be imposed in case of violation of Section 5.¹⁹⁵ However, the warnings in India occupy only 40 per cent of the area of the front panel of the tobacco pack,¹⁹⁶ which is much less than the size recommended by the WHO FCTC (50 per cent

or more of the principal display area of the pack).¹⁹⁷ Moreover, advertising and promotion of tobacco products has been shown to be associated with increased tobacco consumption among children and adolescents in India.¹⁹⁸ The issue of tobacco packs being an agent of promotion and plain packaging as an important tobacco control measure is gaining momentum in developed countries. Since India played a leadership role in WHO FCTC negotiations, there is a need to assess the perceptions of the general population about plain packaging for all tobacco products (smoking and smokeless) in the Indian context. Behavioural norms and social acceptability of tobacco use aligned with brand imaging of tobacco products need to be studied in the light of marketing literature which confers on the tobacco pack the title of ‘silent salesman’; performing critical promotional functions.¹⁹⁹ It was central to this study to assess the feasibility of plain packaging for tobacco products, the associated challenges and opportunities and its plausible public health benefits within the context of developing countries.

The aim of this study was to assess perceptions among the Indian population about plain packaging for all tobacco products (smoking and smokeless) and also to gauge the level of public support for plain packaging, which would be potentially important when advocating to the Government of India the notification of plain packaging for all tobacco products in India, under the ambit of Indian tobacco control law.

Towards this aim, our specific objectives were:

- a. To explore the perception of Indians about plain tobacco packaging as compared to the currently existing branded packs with pictorial health warnings.
- b. To gauge their support for plain packs as a policy intervention in the Indian context.
- c. To conduct a stakeholder analysis with multi-sectoral government and non-government personnel to assess challenges and opportunities in enforcement of plain packaging for tobacco products.

5.2 Methodology

Study design and setting

This cross-sectional study was conducted as market research and undertaken over six months between December 2011 and May 2012. The study involved a qualitative component in the form of focus group discussions (FGDs) as well as a quantitative component which involved stakeholder analysis and an opinion poll with participants in the state of Delhi. This study was funded through a grant from the Australia India Institute. The study was designed by PHFI and HRIDAY and conducted in partnership with the Nossal Institute of Global Health at the University of Melbourne. Inputs were received from Taskforce experts. Ethics approval for conducting research on human subjects was obtained from the institutional ethics committee at PHFI.

Study participants

Focus Group Discussions: Eight FGDs were conducted with adults (participants aged 18 years and over including males and females) and four FGDs were conducted with minors (including boys and girls aged between 10-17 years) from Delhi to assess their perceptions on plain packaging of tobacco products and support for this as a policy intervention. In addition to other issues, the FGDs probed into the potential of a plain packaging policy to promote quitting and prevent initiation of tobacco use. The participants were selected through a purposive sampling technique to ensure equal representation by gender and socio-economic status (SES). For FGDs with adults, the SES of the participants was determined on the basis of location of their residence.²⁰⁰ The type of school (i.e. private or government) attended was considered to determine the SES among adolescents, wherein, those attending private schools were considered to belong to a high SES and those attending the government schools to a low SES.²⁰¹ ²⁰² Participants were recruited by research staff with support from Resident Welfare Associations (RWAs) and community members. Separate FGDs were conducted with adult males and females as well as adolescent boys and girls. Each focus group consisted of 10-12 participants (124 participants overall). FGDs were conducted in the following groups: four FGDs with adult females; four FGDs with adult males; two FGDs with boys from government and private schools; two FGDs with girls from government and private schools.

Stakeholder Analysis: A total of 24 officials from Delhi were recruited using a purposive sampling technique which included civil society members, lawyers and government officials to review the political and administrative challenges and opportunities for enforcing plain packaging for all tobacco products in India, with a specific focus on mechanisms to enforce and monitor such a policy. This included 19 subjects who participated in a consultation on plain packaging of tobacco products organised by the International Union Against Tuberculosis and Lung Diseases (The Union, Delhi) in February 2012.

Opinion Poll: About 300 adult participants (males and females, tobacco users and non-users) were recruited using a quota (purposive) sampling technique from communities to assess respondents' perception on plain packaging of tobacco products and to gauge the level of public support for plain packaging as a policy measure. In order to obtain a wider perspective, an equal number of participants were distributed in the following categories: male never-users, male smokers, male smokeless tobacco users, male dual users (smokers and smokeless tobacco users), female never-users, female smokers, female smokeless tobacco users, female dual users. A selected participant was considered a 'user' if he or she was an ever-user (having used tobacco even once in his or her lifetime) or a current-user (having used tobacco in the past 30 days).^{203, 204} For determining the SES of the participants, the 2011 Revision of the Kuppuswamy's socio-economic status scale was used.

Data collection

Focus Group Discussions: Each FGD was conducted by a trained moderator assisted by a note-taker at a place and time convenient to the participants (mostly RWA offices, community halls schools, homes and shops). The moderator conducted the interview with the help of a FGD guide in English (Appendix A) or in the local language i.e. Hindi (Appendix B) at the convenience of the participants. On the day of the FGD, the moderator first informed the participants of the details of the study and obtained informed consent from the participants. For minors, consent was first sought from the parents in advance and then the children provided their assent. The moderator then introduced the topic and began the discussion with the participants (Figure 1). The note-taker assisted the moderator by noting down non-verbal gestures and cues as well as undertaking the audio-recording of the discussion. Each FGD lasted for about 40-45 minutes. The transcribed tapes were checked against the notes of the note-takers and then translated into English.

Figure 1: Focus Group Discussions



Stakeholder Analysis: Interviews with stakeholders were conducted by trained research staff in English using a short interviewer administered questionnaire (Appendix C). Some of the questions in the questionnaire were open-ended and allowed qualitative feedback from the participants. The questionnaire was administered to the participating officials at a date, time and venue convenient to them, after obtaining informed consent. Each interview lasted for about 15 minutes. For the participants who attended the Consultation organised by The Union, the questionnaire was self-administered during one of the sessions at the consultation. Each participant was given a numerical code on the day of the interview to maintain anonymity and confidentiality. At the end of each day, the responses of the participants were entered into a pre-designed data entry module and prepared for data analysis.

Opinion Poll: The opinion poll was conducted by trained research staff through an interviewer administered questionnaire in English (Appendix D) or in local language i.e. Hindi (Appendix E) after obtaining informed consent. The questionnaire was administered to them at a date, time and venue convenient to the participants. To maintain anonymity and confidentiality, each participant

was given a numerical code on the day of the interview. Each session with a participant lasted for about 10-15 minutes. At the end of each day, the responses of the participants were entered into a pre-designed data entry module and prepared for data analysis.

Figure 2: Dummy Packs of Tobacco Products



For all data collection, dummy plain packs of tobacco products (cigarettes, *bidis*, chewing tobacco) were developed to elicit responses (Figure 2). A one-day detailed training course for the research staff included sessions on data collection tools, protocols and techniques. Procedures on data cleaning and entry were also included in the training.

Data analysis

Qualitative analysis was conducted by a trained qualitative researcher whereby all the transcripts were arranged and compiled together. Data was coded and analysed using the qualitative software program NVIVO 9. Thematic analysis was used in this study. This involves participant views and opinions

being analysed to find common themes and patterns.²⁰⁶ Data was collated into potential themes using all relevant data for identifying frameworks for further in-depth analysis. For this project the analysis referred to the full range of data sources collected throughout the project including the notes, audio tapes and transcripts emerging from them.

In quantitative analysis, besides demographic information (gender, age, education, SES etc.) and tobacco use prevalence, effectiveness of current pictorial warning and respondents' perceptions about plain packaging were explored through descriptive analysis. Chi-square tests were used to test the difference of perceptions about plain packaging and its effectiveness between tobacco users and non users, males and females, high, low and mid SES groups, smokers and smokeless tobacco users. SPSS version 17.0 was the software used for all the quantitative analyses.

5.3 Results

Qualitative

Eight FGDs were conducted with 82 adult males and females. Out of these, four FGDs were conducted with 44 adult males and four with 38 adult females. The age range of adult participants was between 19-64 years. In addition, four FGDs were conducted with 42 adolescents, which included two FGDs with 19 boys and two FGDs with 23 girls. The age range of adolescent participants was between 12-17 years. The participants included both, tobacco users and non-users belonging to different socio-economic groups.

Themes that emerged during the analysis are presented below. In most instances, youth and adult perceptions were collated together. Wherever differences emerged, they have been reported separately.

I. Knowledge of existing tobacco products, brand names, colours and pictorial warnings:

A majority of the participants were aware of various forms of tobacco products, brand names, colours and pictorial warnings on the products. They recalled different brands like "Swagat," "Rajdarbar," "Dilbaag" among smokeless tobacco products, "Red & White", "Gold flake" and "555" among smoking forms of tobacco products. They also shared that these packets are available in different colours like "Red", "White", "Green" and "Golden". Participants could describe the colour and design and associate it with particular brands.

Most of the participants were aware of the pictorial warnings on tobacco packs along with the images these depicted and they could recall them frequently. Among these, most were able to describe the scorpion picture and the damaged lungs pictures. A few of them shared the text warnings – statutory warnings specific to cigarettes – written on the tobacco product packets. The older text warning, 'Smoking is injurious to health' was very well remembered. Some

other participants noticed other text warnings like *"Tobacco is harmful for health"* or *"Tobacco causes cancers."* Some participants were also aware of the rationale for displaying the pictorial health warnings on tobacco product packs. Most of the participants knew or thought that the warnings were there due to statutory requirements. In addition, they could appreciate that the purpose of the warnings was to raise awareness of harm from tobacco use. According to an adult male participant from a low SES community, *"It has an ulcerated mouth picture over it, which means that if you will use the product, your mouth will also become like that; the teeth are also shown to be dirty and stained."*

II. Tobacco packs/packaging attracts people:

The majority of participants agreed that colourful packaging attracts people from all socio-economic backgrounds and age groups, especially the young, to buy tobacco products. They also mentioned that these days most of the tobacco products available are in bright colourful packaging. Some adult male participants felt that generally people buy and consume tobacco by looking at the colour or appearance and attractive packets of the product. They also stated that if the pack was not attractive, i.e. not coloured at all, people might think the product might also not be that interesting. According to them, the packet is the first thing that attracts people, who are eager to know what is inside the colourful packet. All participants also agreed that teenagers/youth are usually attracted to colourful packaging very early. According to an adolescent girl from a low SES background, *"First time when I saw it (the cigarette pack), I thought this pack contains some candies, it looked beautiful and attractive."*

"It attracts. It is colourful so it attracts like Gold flake and so do other packets which come in different colours. I initially started using it because of attraction. Name, brand did not matter for me but I started because the packet was very attractive. Like 'Commando', 'Classic' or 'Charminar' used to come in brown colour which looked good. We started like this only." (Adult male from a high SES background)

A majority of the participants shared that tobacco companies use tactics like making packets colourful to increase their sale and production. In addition, they stated that tobacco companies do not bother about the effect or the harm caused as their main intention is to do business. One of the female participants from a high SES background said, *"Tobacco companies use tactics to make packets colourful to increase their sale and production."*

Some of the participants perceived the tobacco pack as a means to mislead consumers about the brand or the product. For example, some participants believed that putting markings on tobacco products like 'ABC' would show

that it is stronger or lighter than other products. Most of the adult participants mentioned that it is very difficult to understand the contents and the strength of the product (mild and strong) from the appearance of the packet of tobacco products. On prompting, most believed that if cigarette packs mention descriptors such as 'mild' or 'light' or 'slims', it gives an impression that those products are better and less harmful and people might prefer these products as compared to other tobacco products. According to a few adolescent boys there are very few available brands where such descriptors are written on the pack. In addition, they stated that if a cigarette packet is white in colour, it is perceived to be light and if it is dark in colour, it is perceived to be strong.

As shared by an adolescent boy from a high SES background, *"Yes, I have seen it, and there are some packages which say whether it is mild or strong."*

The tobacco packs were perceived as a status symbol with expensive brands being flashed by participants with a high SES. As mentioned by one of the adult males with a high SES, *"The richer people have to show off their wealth, so they buy more attractive looking and expensive packs."* Tobacco packs are looked upon as status symbols and there is an aspiration attached to its use. A male participant from a high SES background shared, *"If I am walking with an expensive cigarette packet, it will create a certain status around me."* Some adolescents also mentioned that, the less educated people who did not go to a good school to study or the poorer are more likely to be attracted to tobacco packages, thereby making them more vulnerable to tobacco industry tactics. As a male student of an elite school added, *"people who go to Government schools might get attracted to the colourful and shiny tobacco packs."* Another female student belonging to an elite school said, *"If you bring in plain packs, those elite women who just show off the brand and style, will stop using tobacco."* The general idea was that those who can afford to will buy and display the suave-looking tobacco packs.

III. Tobacco packs are threats to environmental health:

Some participants reported that the tobacco packs are a threat to environmental health. Adult female and adolescent participants from low- and middle-SES mentioned that people use tobacco and discard the packets causing litter everywhere, which results in a need for regular cleaning of roads. They also mentioned that chewing tobacco pouches made up of plastic wrappers block the drainage system resulting in seepage of drainage water on roads, causing damage to them.

As mentioned by an adult female participant from a low SES background, *"Children don't listen to their elders, they chew gutka and throw the wrappers around, which messes up the lanes, floors, walls everything."*

IV. Awareness about plain packaging of tobacco products:

Awareness among participants of plain packaging was close to none. When explored as a concept, they could imagine what it would be like, with plain packs and just the brand name written on it. None of the participants had ever seen a plain tobacco packet. Participants shared, *"We have always seen coloured, attractive products and never seen plain packs."* (Group's View). When the participants were shown the dummy plain packs, they could appreciate that it would be helpful for prevention and control of tobacco use.

V. Role of plain packaging in tobacco control:

The majority of participants shared that plain packaging will heavily reduce the appeal of tobacco packs especially among the youth and children. Some participants mentioned that young children will find these packs less appealing. One male participant with a high SES said, *"I think it will make a difference as taking out a cigarette from a smart packet gives a certain style statement to the smoker or these youngsters."* A female participant with a low SES shared, *"People who like to show their status will be affected the most."*

Most participants shared their view that plain packaging can help prevent initiation and experimentation but may not promote cessation of tobacco use. Overall, participants thought that plain packaging could contribute to reducing the tobacco use prevalence rates but were not sure of the potential for success of this policy intervention with current tobacco users.

The majority of female participants felt that people would not buy tobacco products with less attractive packaging; as a few of them mentioned, *"On seeing this packet they will think this (plain packs) is local and not good."* A few male participants felt that people will not be able to associate their preferred brand with the brand label on plain packaging, which would make them think that it is some other brand. Most of the participants thought that on the plain packs, the pictorial warnings would appear more prominent, more 'in your face' as a male private school student put it.

Most of the participants agreed that pictorial health warnings could be made more effective through plain packaging. According to them, plain packaging would highlight the pictorial health warning and would make it impactful. Some participants mentioned that if the packet was plain, the warning would attract more attention (increased noticeability) and would help in reduction of sale of tobacco products. Some participants expressed concern that if only cigarettes are available in plain packaging then there was a possibility that people would shift to other tobacco products with attractive packing.

VI. Additional suggestions provided by the participants:

Participants provided some suggestions in order to make plain packaging more appealing and effective. Some participants suggested increasing the size of the pictorial health warnings on the plain pack, while some others suggested writing warnings on the back, in bold letters.

Some participants mentioned that people would buy less if manufacturers clearly mentioned health harms of using tobacco products, alongside large pictures of victims, for example, cancer victims. They suggested that the picture should be in colour as it would have more impact than a black and white picture. Almost all respondents thought that bigger, larger and scarier pictorial warnings on plain packages would be helpful in deterring people from using tobacco products.

Different colours like black, grey, brown (dull shade), and white were suggested by the participants to make the pictorial warning stand out and make more sense of the plain packaging. Among these, the majority of participants were in favour of a light grey colour for plain packaging. A few participants preferred white. According to a male adolescent with a low SES, *“The background should be light grey and the picture should be brighter so that the pictorial warning gets more emphasis.”*

Quantitative Opinion Poll

Overall, 346s participants were surveyed, out of which 52.9 per cent were males, 47.1 per cent were females; 43.7 per cent had a low SES, 39.9 per cent belonged to middle and 16.4 per cent represented high SES. Most of the participants were educated up to high school i.e. 10th standard (58.9 per cent). Overall, 24.3 per cent of participants were unemployed, 21.1 per cent were unskilled workers and 19.4 per cent were professionals. The median age of the participants was 31 years (IQR= 15-40 years). A total of 55.4 per cent were ever tobacco users and 51.2 per cent were current tobacco users. 44.8 per cent of the participants had never used any tobacco products. Out of the current tobacco users, 35 per cent were smokers, 36.7 per cent were smokeless tobacco users and 28.3 per cent used both products (Table 1).

Table 1: Demographic profile of participants and tobacco use prevalence (N=346)

Demographic profile and prevalence	n	per cent
Gender		
Male	183	52.9
Female	163	47.1
Age		
18-33	200	57.8
34-49	110	31.9
50 and above	35	10.1
Education		
Illiterate	55	15.9
Primary School Certificate	53	15.3
Middle School Certificate	36	10.4
High School Certificate	60	17.3
PG Diploma	26	7.5
Graduate or Postgraduate	95	27.5
Advanced professional degree (E.g. PhD etc.)	21	6.1
Occupation		
Unemployed	84	24.3
Unskilled worker (labourer)	73	21.1
Semi-skilled worker	40	11.6
Skilled worker	23	6.7
Clerical, shop owner, farmer	24	7.0
Semi-professional	34	9.9
Professional	67	19.4
Socioeconomic Status		
Low	149	43.7
Middle	136	39.9
Upper	56	16.4
Tobacco Use Prevalence		
<i>Tobacco use</i>		
Current tobacco user	177	51.2
Ever tobacco user	14	4.0
Never user	155	44.8
Current users (n=177)		
Smoke	62	35.0
Smokeless	65	36.7
Both	50	28.3

Knowledge about harmful effects of tobacco

Most of the participants were aware that tobacco use leads to illnesses or diseases (95.1 per cent). Most responses mentioned various types of cancers (Lung, Oral, Breast, Bladder, etc.) that 77.5 per cent of participants reported due to smoking and 73 per cent reported due to smokeless forms of tobacco. In addition, 59.6 per cent reported that smoking causes respiratory diseases and 37.4 per cent reported that smokeless forms cause hygiene problems. Only 39.2 per cent were aware that smoking also causes cardiovascular disease. Only 15.2 per cent and 7.6 per cent reported that reproductive diseases can be caused by smoking and smokeless tobacco use, respectively.

Perceptions about pictorial health warnings

Overall 28.1 per cent of participants usually notice pictorial health warnings first when they look at a tobacco pack while 53 per cent notice branding (e.g. brand name, colour, and design) (Figure 3). 34.4 per cent of males as compared to 21.0 per cent of females usually noticed pictorial warning first ($p < 0.001$). Younger people (18-33 years old) noticed other things such as branding much more than the pictorial warnings. Only 17 per cent of people from age group 50 years and above noticed pictorial warnings as compared to 32.1 per cent of people from the 34-49-year age group and 28 per cent of those aged between 18-33 years ($p = < 0.05$). Significantly more people with low SES usually noticed pictorial warnings (32 per cent) while people from a high SES background noticed other things (like branding etc.) more. Despite the fact that a higher number of participants noticed brand imagery on the pack first, there were no significant differences between the responses of tobacco users and non-users and among users of different tobacco products.

Only 27.7 per cent of participants reported that pictorial health warnings effectively inform about harmful effects of tobacco products. A majority of participants felt that current pictorial warnings can somewhat motivate tobacco users to quit (53.2 per cent) and somewhat motivate non-users to continue to abstain (49.4 per cent). Overall 25.4 per cent felt that it does not at all motivate users to quit and 18.5 per cent believe that it is not at all motivating non-users to continue to abstain. No significant differences were observed in these responses between males and females, among different age groups, different SES categories, users and non-users or between smokers, smokeless tobacco users or users of both forms of tobacco products (Table 2).

Figure 3: What do participants usually notice first on tobacco pack

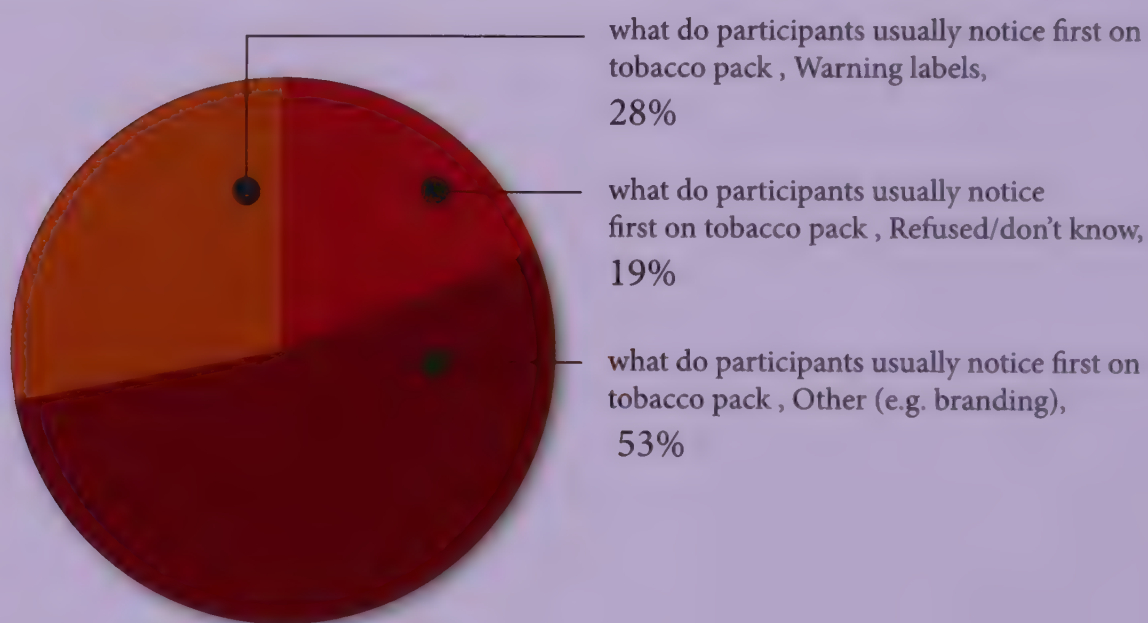


Table 2. Perception about effectiveness of pictorial health warnings, by demographic profile and tobacco use status of the respondents (percent)

	Effectively Inform about harmful effects	Motivate users to quit				Motivate non-users to stay quit				R
		Not at all	Somewhat	Greatly	Refused/ Don't know	Not at all	Somewhat	Greatly	Refused/ Don't know	
Overall	95 (27.70)	88 (25.43)	184 (53.18)	45 (13.01)	29 (8.38)	64 (18.50)	171 (49.42)	69 (19.94)	42 (12.14)	
Gender										
Male	50 (27.8)	49 (26.78)	95 (51.91)	28 (15.3)	11 (6.01)	33 (18.03)	93 (50.82)	42 (22.95)	15 (8.2)	
Female	45 (27.6)	39 (23.93)	89 (54.6)	17 (10.43)	18 (11.04)	31 (19.02)	78 (47.85)	27 (16.56)	27 (16.56)	
p-value	0.972			0.206				0.074		
Age										
18-33	51 (25.8)	53 (26.5)	114 (57)	21 (10.5)	12 (6)	41 (20.5)	99 (49.5)	38 (19)	22 (11)	
34-49	31(28.2)	24 (21.82)	56 (50.91)	18 (16.36)	12 (10.91)	15 (13.64)	57 (51.82)	22 (20)	16 (14.55)	
50 and above	12 (35.3)	11 (31.43)	13 (37.14)	6 (17.14)	5 (14.29)	8 (22.86)	14 (40)	9 (25.71)	4 (11.43)	
p-value	0.956			0.147				0.627		
Socioeconomic Status										
Low	42 (28.6)	39 (26.17)	75 (50.34)	22 (14.77)	13 (8.72)	28 (18.79)	72 (48.32)	29 (19.46)	20 (13.42)	
Middle	30 (22.1)	26 (19.12)	81 (59.56)	17 (12.5)	12 (8.82)	19 (13.97)	69 (50.74)	33 (24.26)	15 (11.03)	
Upper	21 (37.5)	23 (41.07)	24 (42.86)	6 (10.71)	3 (5.36)	16 (28.57)	29 (51.79)	6 (10.71)	5 (8.93)	
p-value	0.085			0.086				0.162		
Tobacco Use Prevalence										
Current tobacco user	53 (30.3)	52 (29.38)	86 (48.59)	26 (14.69)	13 (7.34)	34 (19.21)	87 (49.15)	38 (21.47)	18 (10.17)	
Ever tobacco user	3 (23.1)	2 (14.29)	9 (64.29)	2 (14.29)	1 (7.14)	3 (21.43)	8 (57.14)	2 (14.29)	1 (7.14)	
Never user	39 (25.2)	34 (21.94)	89 (57.42)	17 (10.97)	15 (9.68)	27 (17.42)	76 (49.03)	29 (18.71)	23 (14.84)	
p-value	0.543			0.453				0.877		
Current users										
Smoke	25 (40.3)	23 (37.1)	29 (46.77)	4 (6.45)	6 (9.68)	14 (22.58)	26 (41.94)	13 (20.97)	9 (14.52)	
Smokeless	15 (23.1)	15 (23.08)	33 (50.77)	14 (21.54)	3 (4.62)	10 (15.38)	33 (50.77)	18 (27.69)	4 (6.15)	
Both	13 (27.1)	14 (28)	24 (48)	8 (16)	4 (8)	10 (20)	28 (56)	7 (14)	5 (10)	
p-value	0.091			0.188				0.349		

Perception about tobacco packs

Table 3 shows that overall 76.3 per cent of the participants felt that tobacco packs are attractive. 83.2 per cent reported that colours, designs, gloss and large fonts of brand name on the tobacco pack distract a consumer from the pictorial health warning and 86.7 per cent and 83.8 per cent of the participants felt that the tobacco industry uses attractive packaging to lure adults and adolescents respectively into using their products. More participants from the upper SES group as compared to the lower SES group reported that tobacco packs are attractive (87.5 per cent vs. 72.3.2 per cent; *non-significant*), tobacco packs distract from pictorial health warnings (100 per cent vs. 75 per cent, $p<0.001$) and that the tobacco industry uses attractive packaging to lure children and adolescents into using their products (96.4 per cent vs. 79.7 per cent, $p<0.05$). No significant differences were observed between responses of males and females, and among different age groups. Compared to current tobacco users (79 per cent), more never users (90.3 per cent) reported that attractive packaging is being used to lure children and adolescents. More smokers as compared to smokeless tobacco users and users of both forms of tobacco products felt that tobacco packs are attractive, distract attention from pictorial health warnings and are used by tobacco industry to lure adults, children and adolescents. However, the differences were not statistically significant.

Table 3: Perception about tobacco packs on overall look and attractiveness, by demographic profile and tobacco use status of the respondents

	Attractive	Distract from PW	Adults	Children and adolescents
	n (per cent)	n (per cent)	n (per cent)	n (per cent)
Overall	264 (76.3)	288 (83.2)	300 (86.7)	290 (83.8)
Gender				
Male	136 (74.7)	147 (81.7)	159 (87.4)	155 (85.2)
Female	128 (78.5)	141 (86.5)	141 (86.5)	135 (82.2)
<i>p-value</i>	0.405	0.223	0.813	0.553
Age				
18-33	152 (76.0)	175 (87.5)	179 (89.5)	172 (86.0)
34-49	85 (77.3)	86 (79.6)	95 (86.4)	94 (85.5)
50 and above	26 (76.5)	26 (76.5)	26 (76.5)	24 (70.6)
<i>p-value</i>	0.969	0.092	0.104	0.068
Socioeconomic Status				
Low	107 (72.3)	111 (75.0)	128 (86.5)	118 (79.7)
Middle	104 (76.5)	118 (87.4)	114 (83.8)	115 (84.6)
Upper	49 (87.5)	55 (100.0)	53 (94.6)	54 (96.4)
<i>p-value</i>	0.074	<0.001	0.131	0.013
Tobacco Use Prevalence				
Current tobacco user	133 (75.6)	139 (79.4)	148 (84.1)	139 (79.0)
Ever tobacco user	10 (71.4)	13 (92.9)	11 (78.6)	11 (78.6)
Never user	121 (78.1)	136 (88.3)	141 (91.0)	140 (90.3)
<i>p-value</i>	0.780	0.059	0.114	0.016
Current users				
Smoke	50 (80.6)	51 (82.3)	55 (88.7)	52 (83.9)
Smokeless	44 (67.7)	50 (76.9)	53 (81.5)	52 (80.0)
Both	39 (79.6)	38 (79.2)	40 (81.6)	35 (71.4)
<i>p-value</i>	0.176	0.757	0.466	0.270

Brand value among participants

Overall 28 per cent of the participants felt that tobacco brands are very different and 29 per cent felt that they are somewhat different in how prestigious they are. Only 32 per cent of the participants reported that tobacco brand are not at all different in how harmful they are while 46 per cent reported that they are somewhat or very different. 28.3 per cent and 20.5 per cent of the participants felt that tobacco brands are somewhat different and very different respectively in how attractive they are to adolescents and other consumers.

Perception about effectiveness of plain packaging

A majority of the participants (68.5 per cent) strongly approved of the plain packaging proposal. Only 5.5 per cent participants somewhat or strongly disapproved of this proposal (Figure 4). Table 4 shows that the majority of the participants supported that plain packaging can reduce the attractiveness of tobacco products among both users and non-users both (82 per cent and 83.2 per cent, respectively); it can motivate tobacco users to quit (83.2 per cent) and can also make pictorial warnings more effective (91.6 per cent). Participants across different demographic profiles (gender, age group and SES) and users of different tobacco products (smoked, smokeless and both) had similar responses and there were no significant differences. More current tobacco users than never users reported that plain packaging can reduce the attractiveness of tobacco products among both users and non-users ($p < 0.05$).

Figure 4: Approve plain packaging proposal

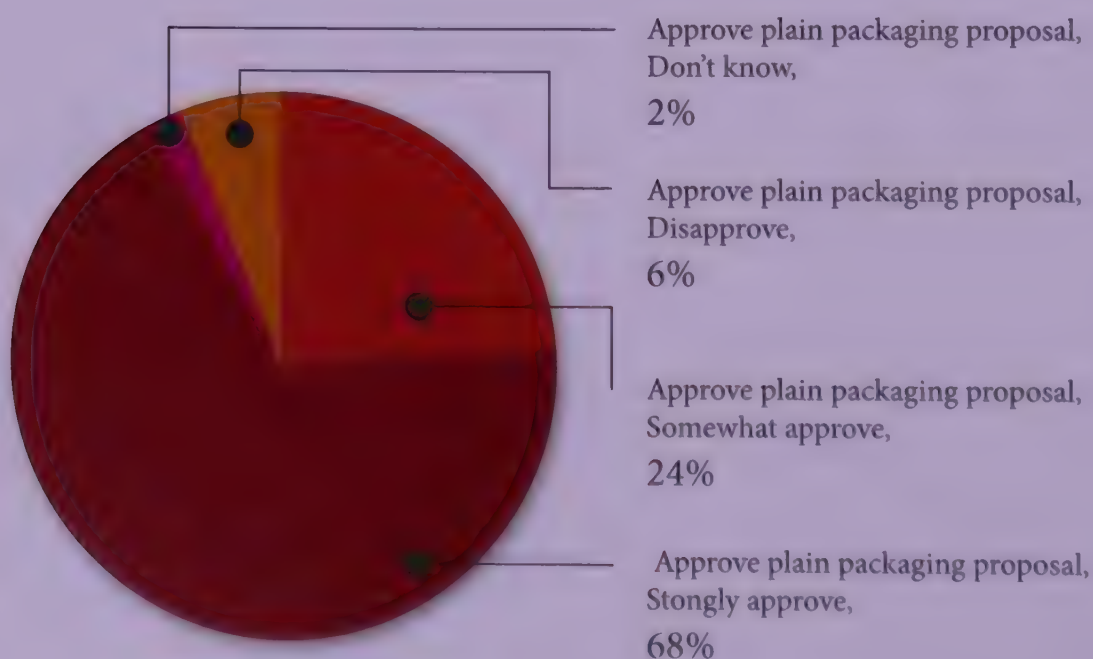


Table 4: Perception about plain packaging on its effectiveness, by demographic profile and tobacco use status of the respondents

	Can reduce the attractiveness of tobacco product		Motivate tobacco users to quit	Makes the pictorial warnings effective
	Among users	Among non-users		
	n (per cent)	n (per cent)	n (per cent)	n (per cent)
Overall	283 (81.8)	288 (83.2)	288 (83.2)	317 (91.6)
Gender				
Male	149 (84.2)	148 (81.8)	153 (84.5)	171 (94.0)
Female	134 (83.8)	140 (85.9)	135 (83.3)	146 (90.1)
<i>p-value</i>	0.914	0.301	0.763	0.187
Age				
18-33	163 (83.2)	167 (83.9)	171 (85.9)	184 (92.5)
34-49	89 (84.0)	89 (81.7)	86 (79.6)	102 (93.6)
50 and above	30 (88.2)	31 (88.6)	30 (85.7)	30 (85.7)
<i>p-value</i>	0.759	0.622	0.341	0.312
Socioeconomic Status				
Low	119 (81.0)	117 (79.6)	120 (81.1)	133 (89.9)
Middle	115 (87.1)	115 (84.6)	117 (86.7)	127 (94.1)
Upper	45 (83.3)	52 (92.9)	46 (83.6)	54 (96.4)
<i>p-value</i>	0.376	0.069	0.446	0.197
Tobacco Use Prevalence				
Current tobacco user	154 (88.0)	154 (87.5)	145 (82.4)	160 (90.4)
Ever tobacco user	9 (64.3)	9 (64.3)	12 (85.7)	13 (92.9)
Never user	120 (81.1)	125 (81.2)	131 (85.6)	144 (94.1)
<i>p-value</i>	0.029	0.040	0.716	0.453
Current users				
Smoke	54 (87.1)	53 (86.9)	51 (83.6)	56 (90.3)
Smokeless	57 (89.1)	60 (92.3)	58 (89.2)	60 (92.3)
Both	43 (87.8)	41 (82.0)	36 (72.0)	44 (88.0)
<i>p-value</i>	0.942	0.249	0.053	0.739

Among three options – Indian packaging with current Indian pictorial warning, plain packaging with current Indian pictorial warning and plain packaging with an effective Australian pictorial warning – most participants felt that plain packaging with an Australian pictorial warning would be more effective in discouraging non-users from initiating tobacco (48 per cent) and in encouraging users to quit (60.7 per cent).

Stakeholder Analysis

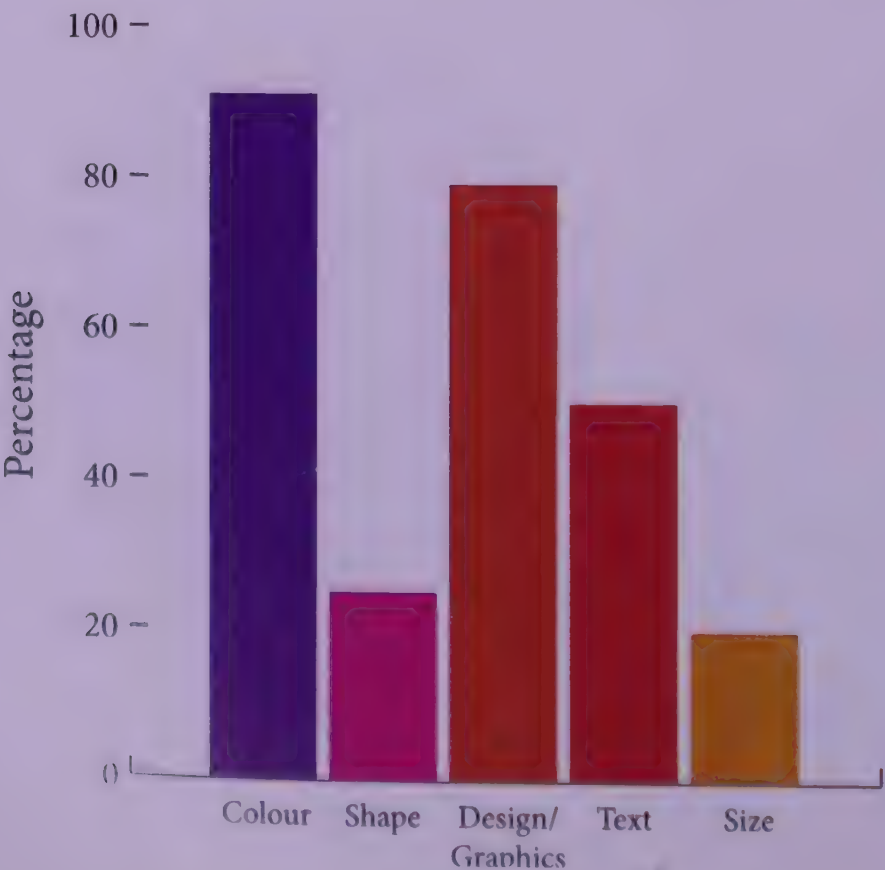
Details of the Stakeholders

Out of the 24 stakeholders interviewed, 14 were males and 10 were females. The stakeholders were from various disciplines with extensive experience in their field of expertise. The participants included representative officials from the Ministry of Health and Family Welfare; the Department of Customs and Excise; WHO, as well as public health experts in tobacco control, cancer prevention and the behavioural sciences; CBOs and NGOs; experts in trade and industry laws and senior faculty members from educational institutions.

Packaging and pictorial health warnings

Almost all the respondents (96 per cent) were aware of packaging and labelling requirements of tobacco products in India and only 12.5 per cent felt that the current pictorial health warnings on tobacco products clearly inform about the health hazards of tobacco use. About 96 per cent participants reported that tobacco products are attractively packaged by the industry. Figure 5 shows the perceptions of stakeholders about the aspects of a tobacco pack that made it attractive.

Figure 5: Perceptions about the different aspects of tobacco pack



Stakeholders suggested that such colour and design on tobacco product packages are carefully chosen by the tobacco industry to attract and/or promote tobacco use among target groups such as children and adolescents (71 per cent), women (50 per cent) and men (75 per cent). Almost all respondents (96 per cent) thought that the current pictorial health warnings could be made more effective. Among those who thought so, the following were suggestions for making the pictorial warnings more effective:

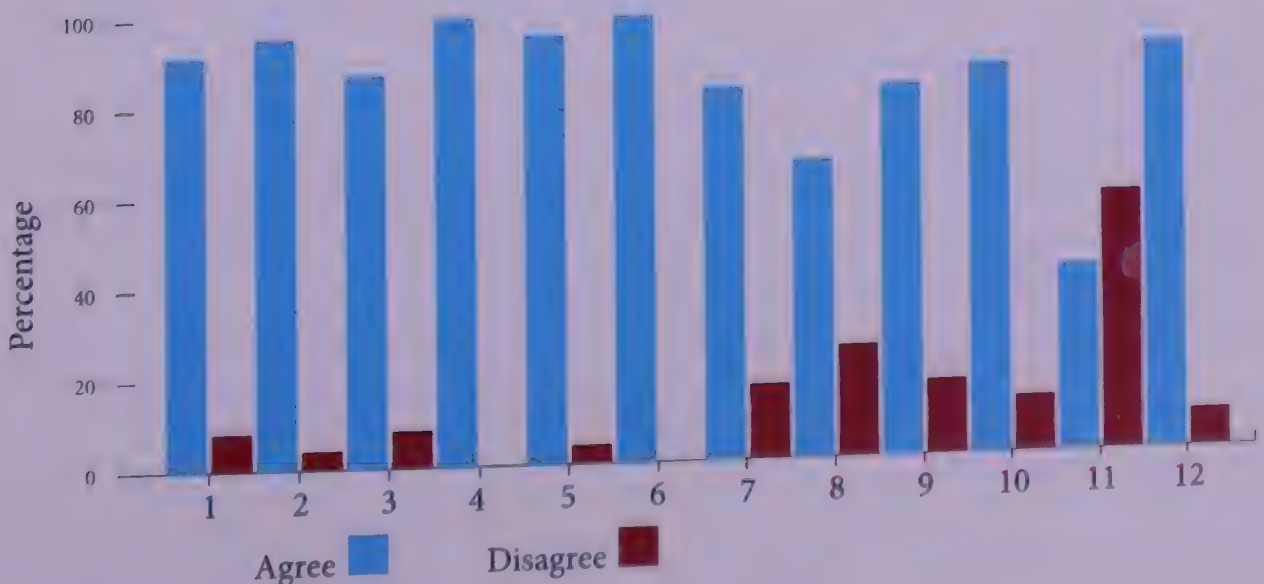
- Health effects of tobacco use are clearly visible in the pictures (66.7 per cent)
- Multiple health effects are depicted by rotation every year (58.3 per cent)
- Neutral/unappealing background colours are used for all tobacco products (50 per cent)
- Uniform pack design is used for all brands of tobacco products (50 per cent)
- Stronger text is mixed with the pictorial health warning (58.3 per cent)

Plain packaging

The majority of respondents (83.3 per cent) were aware of plain packaging of tobacco products and 75 per cent supported that this will reduce tobacco usage. About 92 per cent of the stakeholders said it is relevant to Indian context. Some of the reasons for this stated by the stakeholders were a) with loss of attractiveness of packets youth might be motivated not to initiate tobacco use b) it would help control direct, indirect/surrogate advertisements.

75 per cent of stakeholders said that it is possible to adopt plain packaging in India. A major reason for this as suggested by stakeholders was that it is about the right of the public to good health and the priority should be controlling tobacco use and preventing conditions related to its use. When asked about the potential impact of plain packaging, the majority of responses were either in agreement or strong agreement to the set of 12 questions (Figure 6). Very few of them agreed that plain packaging will lead current users to quit.

Figure 6: Perception of respondents: impact of plain packaging



1. Reduce the attractiveness and appeal of tobacco products
2. Prevent advertisement and promotion on tobacco product packages
3. Reduce ability of tobacco product packages to mislead consumers (with brand variants such as mild, smooth, lights)
4. Increase the noticeability and effectiveness of the pictorial health warnings (PHW)
5. Increase recall of the PHW
6. Affect consumer perceptions of the attractiveness of tobacco products
7. Affect consumer perceptions of the relative safety of tobacco products
8. Reduce youth experimentation with use of tobacco products
9. Prevent the use of brand variants (lights, mild, smooth) of tobacco products as a promotional tool
10. Prevent branding and glamorization especially targeted towards youth (specific colors, design & descriptors like jazz, cool!)
11. Promote quitting among current users
12. More clearly inform consumers about the harmful effects of tobacco use

Implementation of plain packaging

Barriers and key facilitators

Lack of political will, tobacco industry opposition and issues with pan-India implementation were identified as the three most common challenges in implementing plain packaging in India. Other challenges suggested were:

- laying the groundwork by building evidence about effectiveness for such a policy measure
- trademark issues
- weak compliance with the FCTC
- availability a diverse range of tobacco products in India,
- vested interests of policy/decision makers
- strong industry lobbying
- an unregulated market for *bidi* and smokeless forms of tobacco products
- sale of loose tobacco
- product differentiation among various brands
- large numbers of manufacturers
- general lack of awareness around the hazards of tobacco on health, and
- social acceptability

Multi-sectoral partnerships were suggested to be an important facilitating factor for implementation of the plain packaging policy. The stakeholders suggested that the three most important partners for implementation of plain packaging were a) policymakers, the most important being the Ministry of Health and Family Welfare, b) law enforcers and c) civil society groups and NGOs. Some other partners that were suggested to be important were the Department of Trade and Commerce, Law, Agriculture and Rural Development.

Law and Plain Packaging (COTPA, Copyright and Trade Laws)

When asked specifically how plain packaging could be supported within the framework of COTPA, the stakeholders mentioned that the prohibition of advertising, direct or indirect, of tobacco products is a crucial provision of the law that will support plain packaging. As per the provisions of COTPA, pictorial warnings are already in place and they could be strengthened by adopting plain packaging within the existing law. This could be achieved by amending Section 7 of COTPA or introducing plain packaging as a special notification under the current packaging and labelling requirements of COTPA.

Although a majority of respondents were in favour of amendment within COTPA, there were a few identified challenges. These included: that COTPA allows Point of Sale advertising and advertising on packs, the extension of COTPA to incorporate plain packaging could attract legal challenges in terms of its scope and intent, implementation still remains a challenge with existing Act, and that ignorance or lack of awareness of the society about harmful effects of tobacco can make it more time consuming for such policy to be implemented as policymakers and the public need to be sensitised to the issue.

Some of the stakeholders suggested that implementation of plain packaging policy might require amendment to Section 5 of COTPA, which would involve deleting the proviso (exception extended to the tobacco industry) of Section-5(2), which allows advertisements on tobacco packs. About 71 per cent of the stakeholders suggested that COTPA will need to be amended to introduce plain packaging in India. One of the stakeholders suggested:

“Laws are not static, but dynamic in nature where learning is on continuous basis; law has to be adapted and reflect need of the society.”

33.3 per cent of stakeholders thought that copyright and trade laws would adversely affect implementation of plain packaging in India while 58 per cent of the stakeholders thought it would not.

5.4 Discussion

This study assessed the level of public support for plain packaging in the Indian context and the challenges and opportunities likely to be experienced in pursuit of such a policy measure for tobacco control. The promotional value of tobacco packs has been highlighted earlier in this Document and with increasing restrictions on advertising of tobacco products globally, the tobacco packet is conferred a special value by the tobacco industry.²⁰⁷ As observed in earlier studies, a majority of the participants in our study suggested that tobacco companies intentionally make their product packs attractive – with specific colours, trademarks, logos, brand names, graphics and the design of the pack.²⁰⁸ A particular finding was the ‘style’ factor or the aspiration associated with handling the pack of an expensive brand, which was considered as suggestive of affluence. This is particularly worrying as it might encourage low SES groups to spend more trying to mimic those belonging to high SES groups.

The evidence from qualitative and quantitative components of this study show that though the general population is not yet aware of the concept of plain packaging, this issue was familiar to most of the stakeholders who were working in the area of tobacco control or were even remotely associated with this field.

This suggests that the issue of plain packaging is not only a matter of debate in developed countries such as Australia, but also a matter that interests public health experts in developing countries, primarily because of the high projected burden of morbidity and mortality due to tobacco use in these nations.²⁰⁹

Overall, the majority of participants (around 70 per cent) including most of the key stakeholders, demonstrated their support and approval of plain packaging for tobacco products. Public consultations on the issue of plain packaging have been conducted in several countries contemplating introducing this as an important tobacco control measure. Our results are in line with those of a recent opinion poll conducted in the UK by Action on Smoking and Health, the results of which demonstrate 65 per cent support in favour of plain packaging.²¹⁰ Across all demographic groups and stakeholder categories, a majority of the participants perceived that plain packaging would be effective in reducing the attractiveness, appeal and promotional value of tobacco products and their packaging. Our findings are in accordance with and support evidence from developed countries which suggests that plain packaging is perceived unfavourably by smokers in terms of appraisals of the pack, the experience and the satisfaction of smoking cigarettes from these packs, as well as the attractiveness, popularity, stylishness and maturity of smokers smoking from such packs.²¹¹ The majority of the participants suggested that plain packaging would prevent experimentation and initiation of tobacco use among youth and motivate tobacco users to quit (as observed from the results of our opinion poll). A few participants in our study (FGDs and Stakeholder Analysis) expressed some concerns about the use of plain packaging in quitting tobacco among the users. However, studies on plain packaging in developed countries have shown that such packaging

is associated with increased negative perceptions and feelings about the pack and smoking, avoidant behaviour such as hiding or covering the pack, smoking cessation behaviours such as decreased smoking, skipping of smoking episodes and thinking about quitting.²¹² Perceptions of the majority of our participants about the effectiveness of plain packaging in quitting are therefore in accordance with these previous studies. Moreover, it was also suggested that plain packaging would increase the impact and noticeability of the pictorial warnings (which in turn would lead to increased knowledge about the health effects of tobacco use). Earlier, a study conducted in the UK has shown that plain packaging increases visual attention towards the health warning and diverts the same from brand images.²¹³ A large, gory and coloured pictorial health warning would be more prominent against a plain background, thereby amplifying the impact of the pictorial health warning. Thus, the 'dual effect' arising from an increasingly plainer, unattractive coloured pack and increased attention towards a large and effective pictorial health warning appears to be the major reason for the perceived effectiveness of plain packs as demonstrated in the developed countries.

Tobacco company opposition has been consistently observed as a major challenge in Australia where four major tobacco companies, British American Tobacco, Japan Tobacco Company, Imperial Tobacco and Phillip Morris have challenged the laws mandating implementation of plain packaging from December 2012 in the High Court, the major argument by this alliance being impingement by the Government of its intellectual property (i.e. the pack).²¹⁴ Such opposition by the tobacco industry is anticipated and was suggested as a major challenge in our study. However, despite major opposition by the industry alliance in Australia, the Australian Government has shown firm commitment towards implementation of this important tobacco control measure.²¹⁵ In contrast to such a commitment, a lack of political will to introduce such a policy measure is feared in the Indian context. Several other challenges that were pointed out are also peculiar to the Indian context. These include the availability of different types of tobacco products in India including the widely consumed smokeless forms of tobacco products,²¹⁶ an unorganized sector for *bidi* and smokeless forms of tobacco products,²¹⁷ and the loose sale of tobacco. When contemplating plain packaging of tobacco products, policymakers and decision makers in countries such as India need to consider these additional challenges and their impacts – for example, ensuring that the plain packaging rule applies to all tobacco products including smokeless tobacco products. Failing this, there would be the possibility of a shift towards the use of products with unregulated packaging. India, however, has the advantage of having comprehensive tobacco control legislation in COTPA.²¹⁸ The existing provisions (Section 7-11) in COTPA can be amended to incorporate plain packaging. This could also require amendment to Section 5 (2) of COTPA to revoke the exception of on-pack advertising. India also benefits from a dedicated National Tobacco Control Programme (corroborating the

support from Ministry of Health and Family Welfare), a supportive print and electronic media and a strong civil society alliance – the Advocacy Forum for Tobacco Control – a network of civil society organisations with the collective goal of the prevention and control of tobacco use through advocacy for strong policy measures.^{219,220} Such partnerships and resources need to be mobilised to counter much anticipated industry resistance and other challenges on the issue of plain packaging.

5.5 Conclusion and Recommendations

- Across all demographic groups and stakeholder categories, tobacco packs are considered to be attractive, and serve the purpose of promoting tobacco products to children and adolescents as well as to adults.
- Various colours, brand names, logos, design and graphics, misleading descriptors etc. on a tobacco pack are widely noticed and cause distraction from the health warnings.
- Expensive tobacco brands with flashy packs are perceived to be associated with a style factor and reflect an aspirational value.
- There was substantial support across demographic groups and stakeholder categories, in favour of plain packaging for tobacco products.
- It was perceived that plain packaging would help in reducing the attractiveness, appeal and promotional value of the tobacco pack, prevent experimentation and initiation of tobacco use among children and youth, increase noticeability and effectiveness of the pictorial health warnings on tobacco packs and reduce the sale of tobacco products. However, there were concerns about the use of plain packaging for the purposes of quitting tobacco among users.
- Plain packaging with dull colours such as light grey were favoured by a majority of the participants, so that packs would appear unattractive and pictorial health warnings would stand out prominently against the plain background. Further large-scale studies are, however, required to ascertain the preferred colour for plain packaging.
- Support was seen in favour of increasing the size of pictorial health warnings on plain packaging with graphic colour images of, for example, cancer victims.
- Plain packaging of tobacco products was seen as relevant and appropriate with high support (75 per cent) for adoption of this policy in the Indian context.
- There is a need for multi-stakeholder partnerships between government departments and NGOs to collectively support plain packaging as an important tobacco control measure.
- There is a need for advocacy for prioritising public health in international trade agreements and to seek amendment of Sections 5 and 7 of COTPA to incorporate provisions on the plain packaging of tobacco products.

Chapter 6

Potential challenges in India

6.1 Legal Challenges

Different and diverse challenges must be confronted in any attempt to introduce plain packaging legislation. The first step can begin with mapping the various rules and regulations within India's constitutional and legal framework and *existing domestic laws that need to be amended. It may be prudent to introduce an amendment into COTPA on plain packaging. As a sovereign state, India has considerable leeway at the domestic level to do more than what is merely permitted by the FCTC's minimum standard.* To initiate change by making new rules and amending policies, a wider consultation among ministries, civil society and stakeholders is necessary to elicit specific suggestions, but also to help generate awareness of the issues around the tobacco epidemic, tobacco control and the relevance of plain packaging. The results of the market research (See Chapter 5) demonstrate such support for introducing plain packaging. Ideally, a larger study, with a nationally representative sample size would provide highly credible data. Australia's tryst with plain packaging begins in December 2012, and this will inform the global community of the efficacy and relevance of plain packaging.

In general, there are three steps to changing a law.

- First, directly change the law.
- Second, make changes to existing enforcement measures, as well as to the liability aspects of laws. For example, all environmental laws have strict liability provisions for offences, so this can be considered in the Indian context as well.
- Third, in order to establish a legal argument on liability, it needs to be substantiated by a strong chain of evidence.

Consider the following in the Indian context. After the stipulated age of 18, a consumer is considered a rational being capable of making informed choices. Those who took up smoking before the introduction of the textual warning in 1975 (*The Cigarettes Act 1975* made it mandatory for cigarettes only to have the statutory warning: 'Cigarette smoking is injurious to health') were not adequately made aware of the risks alluded to by this generic term as it did not identify the extent of the damage or the nature and intensity of use which could cause injury. It was only in May 2009 that the statutory warning 'Tobacco causes cancer' was printed on cigarette packages. Therefore, new measures that may be enacted today can only work as preventive, not curative, measures, and their benefits may be anticipated in the future.

This is why careful analysis of the overlapping rules and regulations that might exist with any kind of amendment to bring about plain packaging in India is necessary as due diligence. Some aspects of the laws on patents, designs and trademarks may pose major obstacles in the path to plain packaging, and require further examination because other ministries such as those of Commerce, Trade and Finance may have to get involved in such matters. The only way to successfully curb on-pack advertising is by incorporating public health policy measures that anticipate and render the trademark argument weak.

6.2 Administrative challenges

India's federal system has complex layers of administration. Therefore, assigning responsibility for enforcing plain packaging will depend on the specificities of the law ultimately framed. To take one example, in the case of Maharashtra, which has banned sale of alcohol to those under 25, it is the excise department which enforces this law. On a *prima facie* basis, this may have appeared unusual but the government of Maharashtra went ahead and did it – demonstrating political will to back up legislation. In addition to political will, careful groundwork, consultation and due diligence is necessary to ensure success given India's complex administrative realities.

The need for due diligence

Transparent, participatory and informed law making is required. The Taskforce reiterates what its own research and what the legal expertise provided at the Stakeholder Consultation buttresses: ***International treaties that may threaten plain packaging will not hold against holistic legislation created transparently.*** Nevertheless, any body of legislation will need to be backed by empirical studies which make a cogent case for its implementation. The job of pushing the standard for empirical studies belongs to civil society. While there is a need to safeguard public health and shore up the strength of international treaties, trade agreements tend to stand in opposition to tobacco control regulations. A broad public policy framework needs to address and resolve disputes, whether domestic or international and to keep national public health central to the arguments. Consider the participatory dimension. **One way to compensate for the ill-effects of tobacco as a sector would be to strengthen corporate social responsibility regulations.** For example, Mexico's legislation directs companies to invest in both saving and distributing indigenous corn seeds to local farmers and educate them to sustain the preservation process and keep growing those varieties of corn. This measure helps to limit the potential natural catastrophe that genetically modified seeds could create. Similar models can be worked out in the tobacco sector too.

Extensive mapping is required in relation to BITs and FTAs to patch up any loopholes that may help make the case against stringent tobacco control measures. The decision to be taken therefore would be to determine whether disputes would be dealt with through investor-state arbitration or through state-state arbitration. Both avenues have their pitfalls. Similarly, it would be helpful to pre-test and research the argument that consumers and/or retailers would have difficulty in distinguishing between different brands of tobacco products. This may be exaggerated in the Indian context, but probably not by as much as it is in the Australian context. An analysis of the cost-effectiveness of implementing plain packaging would perhaps be more viable after it is implemented in Australia later this year.

Ethical concerns: plain packaging and consumer rights

The underlying principle of plain packaging is to reduce 'recruitment' of potential tobacco users by making packaging unattractive. If children and youth find the product unattractive and harmful, they may not become regular users. Even if such an intervention over time can only reduce youth tobacco use marginally (say by 5 per cent) it is likely to be as cost-effective as any other proven prevention measure. In reality, in most developing countries, enforcement-of-access rules are weak or negligible since violations of sale to minors are frequent. However, with plain packaging even new users will be adequately warned. COTPA clearly states that tobacco products must be sold only to persons of age 18 years and above. **However, the enforcement of this law is the government's burden and cannot be transferred to manufacturers.** The quality of a product is also reflected through the packaging of a product. A concern that may be raised with plain packaging is that the lack of visual demarcations and packaging details might mean consumers are unable to decipher the true quality of the product before purchase.

The same argument can be used by tobacco companies where they claim a violation of their freedom of expression to differentiate their product's quality from another's. From a consumer rights point of view, the consumer of tobacco products does not have adequate information about what he or she is consuming. This could be a useful angle to pursue in developing arguments for plain packaging as an augmentation of the consumer's right to know what a product contains – for example, its potentially damaging health consequences.

6.3 Plausible arguments against any plain packaging measure

A number of the realities of the Indian context need to be seriously considered, and it is wise to counter-factually analyse the case for plain packaging by anticipating tobacco industry arguments.

1. One practical hindrance to plain packaging is the 'retail reality' of cigarette sales. *Panwaris* (local vendors and kiosks) sell most of their cigarettes to consumers as singles. These local vendors are not registered, nor are their products sold with proper receipts. Once these outlets are licensed, there will be more regulation. Young people buy individual cigarettes and not packs with pictorial warnings. Therefore, a measure of this nature alone will not bear fruit. It is important to curtail the sales of loose cigarettes. However, this is unsustainable as a measure at a local level in India. Since tobacco products are sold without receipts in India, despite Value-Added Tax (VAT) being charged, there is a case to be made that each vendor should provide a receipt. Additionally, the tobacco industry will need to be taxed at the retail level as well, rather than making an ex-factory payment.²²¹ In this context, the need to have strict checks on the illicit trade of tobacco in the country cannot be over-emphasised. Technically, various measures exist to deal with this problem: requiring barcodes and/or Radio Frequency Identification (RFID) tags can track the physical movement of merchandise; the formal licensing of machinery used for tobacco production is another option; and, finally, perhaps a clearing house system for all information related to registrations and bar codes could also be devised.
2. The tobacco industry is also likely to invoke the right to livelihood and the loss of employment that is inevitable due to stringent tobacco control measures. It is incumbent on the Government of India to provide other opportunities for livelihood or sufficiently yielding cash crops to sustain the loss of this industry. Can it afford this monetary strain in the present day context? The Government can intervene at any time to safeguard public health and take definitive steps to reduce the proliferation of a crop, or reduce its production and consumption. In short, there is primacy of public health over right to livelihood. **The Government has an ethical (if not moral) obligation to mitigate harms to public health and give it primacy over livelihood.** A specific instance of this imperative is the case of the relocation of small industry out of Delhi to reduce lead and to improve air quality in 1999.

3. There is another nuanced argument that can be made: the Government is imposing regulatory measures without strong or proven evidence of the public health benefits of such a measure; the Government is merely interfering with the right to free trade. This contention would probably be argued along the following lines – plain packaging creates an entry barrier for new tobacco companies from entering the Indian market. Entry-level tobacco companies may take the government to court claiming that the plain packaging regulation prevents them from establishing a brand in the market and attempts to protect the market share of existing, established companies. Fair and equal trade provisions in WTO agreements and the competition law of the country may provide a substantial argument to new entrepreneurs. These companies may insist that a few players are a cartel and are protecting their markets and that the Government of India is party to the violation. While the law provides a consumer the right to choose, this choice needs to be based on the provision of sound information. Now, a tobacco company needs only provide the relevant information that a user may require to judge the ill effects of a product on his or her health. *With this understanding, plain packaging does aim to be **more** informative than the existing packages are because it removes distractions and highlights pictorial warnings.*
4. Finally, it is anticipated that the industry will use the arguments around existing packaging to counter the need for plain packaging in India, contending that a lot of technical difficulties would be entailed in switching to plain packaging. For instance, the tobacco industry could falsely draw attention to the high cost of switching to new machinery for new printing standards. Further, different brands have differing colour schemes and designs to mark each one out as unique. This might also serve the purpose of making it easier for the retailers and customers to distinguish one brand from another and this may be considered. However, the industry could be expected to point out that making tobacco packs standard across all categories might make brand identification difficult for their retailers and consumers. The Taskforce believes that a counter argument to this is simple. **The very objective of plain packaging is to remove the appeal that branding constitutes by creating misleading perceptions in the minds of consumers. This is the very *raison d'être* of plain packaging.**

In sum, none of these arguments in themselves categorically oppose plain packaging and there are valid counter-arguments to each point. However, this variety of legal challenges – or opportunities – will require a more sophisticated understanding of the idiosyncrasies not only of Indian lawmaking processes, but also the realities within which these laws are applied and implemented.

6.4 Other Challenges

As seen in the Indian experience with pictorial warnings, the Indian tobacco industry is politically powerful and has the ability to affect the functioning of multiple sectors. The body of evidence to make the case for plain packaging needs to be built up for the Ministry of Health and Family Welfare keeping this factor in mind. It will be incumbent on the Ministry of Health and Family Welfare to anticipate the objections of other ministries and create an inter-ministerial body responsible for enacting tobacco control measures. However, since the enforcement of the regulations is a state-level issue in a federal system, different states will need to volunteer to enforce the law in their respective states. This is something that will therefore depend on the degree of political will that the Government of India can bring to bear upon this issue. Article 5.3 of the FCTC establishes a Code of Conduct with respect to the tobacco industry and can be followed up to ensure that the tobacco industry's access to policymakers and legislators remains in the public eye.²²² The Government needs to keep the industry off-limits while developing a plain packaging policy.

6.5 Conclusion

Analysis aside, plain packaging needs to be part of a suite of other tobacco control measures, rather than being a standalone measure all by itself. It would be best to focus the messaging of plain packaging well – that it ought to be framed as a measure to disincentivise the promotion of tobacco use as a whole. **The focus of plain packaging is more on reducing greater tobacco use initiation than curtailing further promotion. Plain packaging has been known to assist in effective quitting behaviour. It can only do India a world of untold good.**

Chapter 7

Key Recommendations

Considerable support and evidence exists in favour of the plain packaging of tobacco products as an important tobacco control measure in India. In many countries, packaging has become, due to the increasing number of advertising restrictions, the ultimate form of advertising for tobacco products. The body of plain packaging research shows consistently that pack brand imagery distracts from, and therefore reduces, the impact of health warnings. Packaging and branding attracts new users. Youth are especially susceptible to the lure of colourful brand imagery, since it maintains the appeal for the product for current users, making it more difficult for them to quit. Tobacco is the only consumer product that actually kills when used as intended by its manufacturers, and it kills 50 per cent of its regular users.

Policymakers must address this epidemic in India. After undertaking a review of policy initiatives to introduce plain packaging from various national settings, consultations with Indian, Australian and other international public health experts, and market research study in the Indian context, the Australia India Institute Taskforce on Tobacco Control recommends the following short, intermediate and long term measures that are deemed to be necessary for introducing and implementing a plain packaging policy in India to supplement other tobacco control measures.

Key Recommendations

Short-term measures

- **Frame plain packaging as a public health issue.** Since plain packaging is meant to curb tobacco consumption, it should be communicated as being in the larger public health interest. The measure should be framed as beneficial for the public good and a positive policy measure. This message needs to be repeated; it will help the Government avoid being sidetracked by vested commercial interests.
- **Strengthen pictorial warnings.** This sends a very strong public health message. Existing pictorial warnings should be made more graphic, be scientifically chosen, field-tested, and rotated more frequently.
- **Establish a Code of Conduct pursuant to Article 5.3 of the FCTC.** Designate a specific governmental authority at both the Central and State Government levels to prevent the tobacco industry from unduly influencing the government and ensure that its interactions with bureaucrats and political leaders be open to public scrutiny.

- **Compile a body of evidence supporting plain packaging in the Indian context.** This should reside with the Ministry of Health and Family Welfare, which is best positioned to be the nodal ministry to pilot this legislative change, to make the case for plain packaging. The case must be made through this body of evidence that plain packaging is a necessary public health measure that can achieve its objective.
- **Consider compatible best practices from the Australian experience.** This Document is a toolkit for actionable tobacco control steps leading to real policy change. It demonstrates that a viable model exists for the Indian Government, tobacco control experts and civil society.

Intermediate measures

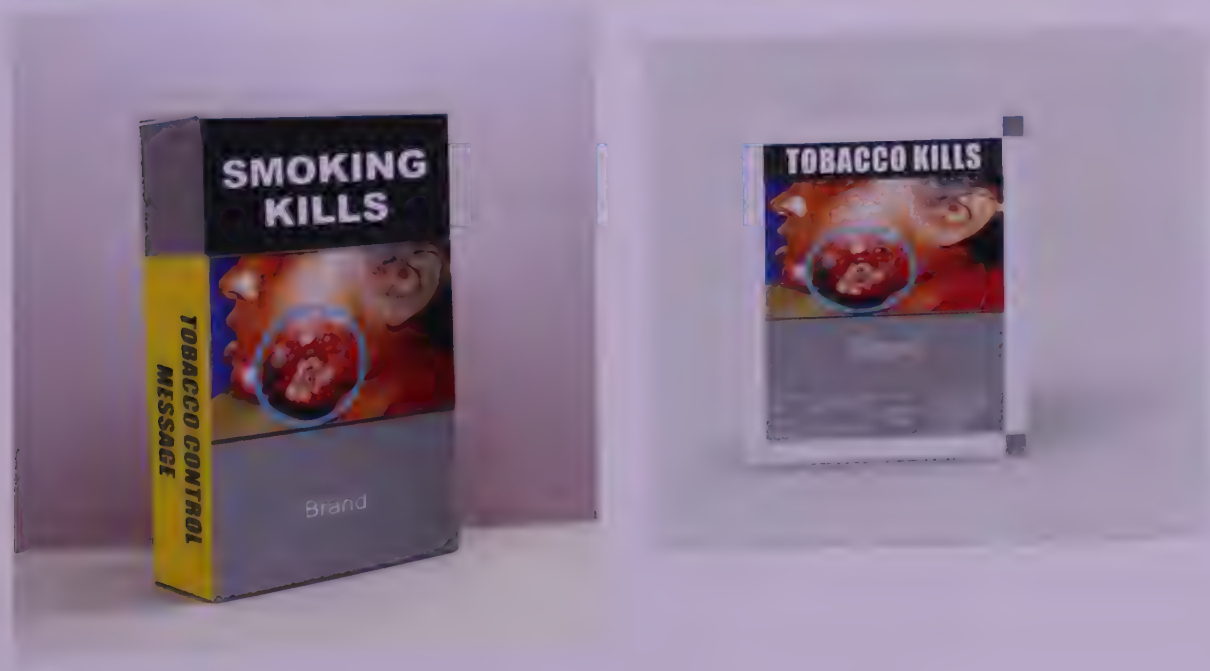
- **Amend COTPA -- the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.** As a first step, Section 5, provisions that limit tobacco advertising, promotion and sponsorship, and Section 7, provisions and specifications for pack warnings for tobacco products, can be amended suitably to facilitate the introduction of plain packaging in India.
- **Refer to Articles 11 and 13 of the FCTC when advocating for plain packaging.** Plain packaging is already being considered in the UK and New Zealand and has received widespread coverage on an international scale. It should be framed as an obligation of FCTC-ratifying countries.
- **Carefully analyse all international investment agreements.** India has more than 60 bilateral investment treaties (BITs), multilateral treaties and Free Trade Agreements (FTAs) with varying definitions of ‘investments’, ‘trademark usage’ and ‘intellectual property rights’. Although unlikely to stop plain packaging, these agreements need to be studied, and the Indian Government needs to carefully consider the implications of these existing agreements *vis a vis* plain packaging legislation.
- **Educate the public about the burden of tobacco consumption** in terms of disease, deaths, both State and individual costs, and on how plain packaging can assist in significantly reducing this burden. As in Australia, the measure will be supported for its public health impact if the authorities educate the public and increase their understanding of, and openness to, plain packaging.
- **Conduct further research** to assess the understanding and acceptability of plain packaging.

Long-term measures

- **Ensure that a law for the implementation of plain packaging is watertight,** specific and stringent and avoids loopholes that the industry could use. In the event that the amendments/laws drafted for plain packaging are found to be in conflict with other existing laws, an overriding provision would need to be made so that plain packaging laws could override other legislation.
- **Accompany plain packaging legislation with a comprehensive suite of measures.** Tobacco control cannot be a piecemeal effort but needs to be comprehensive, involving increased taxation, education campaigns, a push for better pictorial warnings, a ban on Point of Sale advertising, and plain packaging.
- **Foresee key structural and employment issues** and plan economically viable alternatives for tobacco farmers, *bidi*-rollers and *tendu* leaf collectors. Devise options to develop opportunities for other livelihoods in sufficiently yielding cash crops for a sustainable solution.

As a signatory to the WHO's FCTC, India needs to ensure that all the recommended and effective measures are taken to curb the tobacco epidemic. Despite the existence of prescribed legislation for packaging of tobacco products under Section 7 of COTPA and Article 11 of FCTC, the tobacco industry employs the tobacco pack as an important medium for Point of Sale advertising and promotion of their brand. It is important that to effectively comply with Article 11 and 13 of the FCTC, the packaging of tobacco products needs to be increasingly plain with larger and effective pictorial warnings and health messages. **Through research, expert inputs, and mutual learning, the Australia India Institute Taskforce on Tobacco Control supports and recommends plain packaging as an important measure to complement other effective tobacco control measures in India.**

Proposed Plain Packaging for Indian Tobacco Products



ENDNOTES

INTRODUCTION

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CHAPTER 1

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CHAPTER 6 ENDNOTES

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Appendix A

Assessing the Indian Socio-Political Scenario for Plain Packaging of Tobacco Products as a Policy Intervention



Questions for the Focus Group Discussions:

1. Have you ever seen any tobacco product (cigarette, gutkha and bidi packaging? Please describe your impressions on seeing a tobacco pack. (*Probe: packet design, colour scheme, brand names*).
According to you, how important is the packaging and labelling of any tobacco product? Do you think the current packaging and labelling of tobacco products promote tobacco products?
2. Can you recognize which tobacco product is mild/strong or less harmful from package appearance? (*Probe for any misleading messages/ misbelieve/ false perception*)
 - Did the packaging of the product play a role in your decision to use or not to use tobacco product?
3. Have you ever seen the pictorial health warnings on any tobacco product? If yes, please describe the warnings that you have seen (spontaneous recall). If no, aid the recall by describing the text warning first (*Probe: packet design, pictures, colour scheme, message, brand names*).
4. In your opinion what are the reasons for displaying these pictorial warnings on tobacco products? (*Probe: provision of law, government initiative to create awareness among people about tobacco menace, protecting youth and adults from tobacco use, strength of pictorial warnings vs. identification of brand name*)
5. Have you seen/ heard about the plain packaging on tobacco products? How and Where? Please share your experiences? (*Probe: packet design, colour scheme, brand names*).
6. (Please show the dummy pack & discuss). Do you think Plain packaging of tobacco products are helpful and effective to

- Enhance pictorial warnings which inform tobacco users about health risks of tobacco use.
 - Affect the appeal of the tobacco product in terms of the appeal of the pack.
 - Adults and children will find these packs less appealing, less palatable and less satisfying.
 - Prevent branding and glamorization especially targeted towards youth
 - Prevent children / youth/adults tobacco use
 - Helps in reducing tobacco use rates
 - Helps in increasing consumer knowledge about health risks of tobacco use
 - Support tobacco users to quit.
7. (Please show the dummy pack and discuss) If you compare both the packs which one is more helpful and effective in discouraging from initiating/experimenting tobacco use? (*Probe : gender, SES, literacy, youth vs. adults*)
8. In your opinion which is more helpful and supportive in reducing and quitting tobacco use among users. (*Probe : gender, SES, literacy, youth vs. adults*)
9. Any additional information that can be put up in these plain packaging. Please suggest.

Appendix B

नीतिगत सुधार के रूप में तंबाकू उत्पादों की साधारण पैकेजिंग के लिए भारतीय सामाजिक-राजनैतिक परिवेश का मूल्यांकन।

फोक्स ग्रुप विचार-विमर्श के लिए प्रश्न

1. क्या आपने कभी तंबाकू उत्पाद देखा है (सिगरेट, गुटका और बीड़ी पैकेजिंग)? तंबाकू पैक को देखकर आपकी क्या प्रतिक्रिया होती है। (जांच : पैकेट डिजाइन, रंग योजना, ब्रांड नाम) आपके अनुसार किसी तंबाकू उत्पाद की पैकेजिंग और लेबलिंग में क्या महत्वपूर्ण है? क्या आप मानते हैं कि तंबाकू की मौजूदा पैकेजिंग और लेबलिंग तंबाकू उत्पादों को प्रोत्साहित करती है?
2. क्या पैकेज को देखकर आप यह निर्धारित कर सकते हैं कि कान सा तंबाकू उत्पाद मध्यम / शक्तिशाली या कम नुकसानदायक? (किसी भ्रामिक संदेश / असत्य / झूठी सोच की जांच)
 - क्या उत्पाद के पैकेजिंग की भूमिका तंबाकू उत्पाद के उपयोग या उपयोग करने का निर्णय लेने में अहम भूमिका निभाती है?
3. क्या आपने कभी किसी तंबाकू उत्पाद की चित्रित स्वास्थ्य चेतावनी को देखा है? यदि हां, तो स्पष्ट करें कि आपने किस तरह की चेतावनी देखी है (स्वैच्छिक आह्वान)।

यदि नहीं, तो विषय-वस्तु चेतावनी को स्पष्ट करते हुए आह्वान की सहायता की जाए (जांच : पैकेट डिजाइन, चित्र, रंग योजना, संदेश, ब्रांड नाम)
4. आपके विचार से तंबाकू उत्पादों पर इन चित्रित चेतावनियों को प्रदर्शित करने के क्या कारण हैं? (जांच तंबाकू नियंत्रण उपाय, युवा और किशोर वर्ग को तंबाकू उपयोग से सुरक्षित रखना, चित्रित चेतावनी बनाम ब्रांड नाम की पहचान को मजबूत करने के बारे में लोगों के बीच जागरूकता बढ़ाने के लिए कानून और सरकारी पहल का प्रावधान)
5. तंबाकू उत्पादों पर साधारण पैकेजिंग के बारे में आपने सुना / देखा है? कब और कहाँ? कृपया अपना अनुभव बताएं? (जांच पैकेट डिजाइन, रंग योजना, ब्रांड नाम)
6. (कृपया नकली पैक दिखाएं और विचार विमर्श करें) क्या आप मानते हैं कि तंबाकू उत्पादों की साधारण पैकेजिंग निम्नलिखित के लिए सहायक और प्रभावशाली होगी

- चित्रित चेतावनी को बढ़ावा देना जो तंबाकू खाने वालों को तंबाकू इस्तेमाल के स्वास्थ्य जोखिम के बारे में अवगत कराएंगे।
 - पैक को आकर्षक बनाने के संदर्भ में तंबाकू उत्पाद के आकर्षण पर प्रभाव डालना।
 - युवाओं और बच्चों के प्रति पैक कम आकर्षक, कम उपलब्ध तथा कम संतुष्टि वाले होने चाहिए।
 - ब्रांडिंग और ग्लैमराइजेशन को रोकना विशेष रूप से जो युवा वर्ग को ध्यान में रखकर लक्षित की गई हो।
 - बच्चों / युवा / व्यस्क लोगों में तंबाकू उपयोग की रोकथम
 - तंबाकू उपयोग दर कम करने में सहायक
 - तंबाकू उपयोग के स्वास्थ्य जोखिम के बारे में उपभोक्ता जानकारी में वृद्धि में सहायता
 - तंबाकू खाने वालों की आदत छुड़ाने में सहायता
7. (कृपया नकली पैक दिखाएं और विचार विमर्श करें) यदि आप दोनों पैक की तुलना करें कि कौन सा पैक तंबाकू खाने को शुरू करने / इसका अनुभव लेने से हतोत्साहित करने में प्रभावशाली है? (जांच लिंग, एस ई एस, साक्षरता, युवा बनाम व्यस्क)
 8. आपकी राय में तंबाकू खाने वालों में तंबाकू छोड़ने और इसे कम करने में कौन ज्यादा मददगार और सहायक होगा (जांच लिंग, एस ई एस, साक्षरता, युवा बनाम व्यस्क)
 9. इस साधारण पैकेजिंग के बारे में क्या कोई अतिरिक्त सूचना प्रस्तुत की जानी है। कृपया सुझाव दें।

Appendix C



Stakeholder Consultation on Assessing the Indian Socio-Political Scenario for Plain Packaging of Tobacco Products as a Policy Intervention

Name: _____

Designation: _____

Department/organization: _____

State: _____

Email: _____ Phone: _____

Place: _____ Date: ____/____/____

This stakeholder consultation intends to collect information from key stakeholders in India on the feasibility of implementing plain packaging for tobacco products in India and assess readiness among the stakeholders for such a tobacco control policy and to understand the process and impact of such an intervention. In the long term, as part of a comprehensive suite of tobacco control measures, this policy decision will contribute to reduction in rates of tobacco use in the country.

Information collected here shall be strictly confidential and will be used only for the purposes of this policy research study. The information collected will be used for developing a policy brief on the subject matter that will feed a larger stakeholder consultation on the subject matter to be organized by the India-Australia Task Force on Tobacco control.

The information will be used only for the above said purposes and individual’s identity will not be revealed in any of the publications or deliberations resulting from this study.

This stakeholder analysis is being conducted in collaboration with The Nossal Institute for Global Health, Australia India Institute, University of Melbourne and International Union Against Tuberculosis and Lung Disease, New Delhi.

Questions

1. Are you familiar with the packaging and labeling requirements of tobacco products in India?

- a. Yes ☐
- b. No ☐

2. How do you rate the clarity of the current pictorial health warnings on tobacco products in informing you about the health hazards of tobacco use?

- a. Very clear
- b. Clear
- c. Somewhat clear
- d. Not Clear
- e. Confusing

3. Do you think tobacco products are attractively packaged?

- a. Yes ☐
- b. No ☐

If answered No, skip to Q6.

4. What elements of the tobacco product pack make them attractive?

- a. Colour
- b. Shape
- c. Design/Graphics
- d. Text
- e. Size
- f. Others (Please specify): _____

5. Such color and design elements of a tobacco product package are carefully chosen by the tobacco industry to attract and/or promote tobacco products among: (Mark all that apply)

- a. Children and adolescents ☐
- b. Women ☐
- c. Men
- d. Aged
- e. Others (Please specify): _____

6. Do you think the current pictorial health warnings can be made more effective?

- a. Yes
- b. No

c. Don't know

If yes, what do you suggest (chose options from below, you can ✓ multiple options):

- a. Health effects of tobacco clearly visible in pictures
- b. Multiple health effects to be informed by rotation every year
- c. Neutral/unappealing background color for all tobacco products
- d. Uniform pack design for all brands of tobacco products
- e. Stronger health warning text
- f. All of the above
- g. Others (please specify)_____

7. Are you aware of plain packaging for tobacco products?

- a. Yes ☐
- b. No ☐

If no, show dummy packs

8. Do you think plain packaging of tobacco products can decrease tobacco usage?

- a. Yes
- b. No
- c. Don't know

9. Do you think plain packaging is relevant to Indian Context?

- a. Very relevant ☐
- b. Relevant ☐
- c. Somewhat relevant ☐
- d. Irrelevant ☐
- e. Don't know ☐

If answered a-d, why? _____

10. Will it be possible to adopt plain packaging in India?

- a. Certainly ☐
- b. May be ☐
- c. Can't say ☐
- d. May be not ☐
- e. Not at all

If answered a, b, d or e, state why?

11. List top three challenges or barriers, in your opinion, in implementing plain packaging in India?

a. _____

b. _____

c. _____

12. Who according to you are the three most important/influential partners in implementing this policy?

a. _____

b. _____

c. _____

13. How might this policy be supported by COTPA?

14. What according to you are the weaknesses of COTPA in implementing this policy?

15. Do you think COTPA should be amended/will need amendment to introduce plain packaging?

a. Yes ☐

b. No ☐

c. Not sure

If yes, then please suggest some amendments which are relevant as per your view

.....
.....
.....
.....

16. Do you think copyright and trade laws will adversely affect implementing of plain packaging in India?

- a. Yes ☐
- b. No

If yes, how?

17. Do you think introducing plain packaging will: (Please ✓ against applicable)

Sl no.	Reason for introducing plain packaging	Strongly Agree	Agree	Can't Say	Disagree	Strongly Disagree
a.	Reduce the attractiveness and appeal of tobacco products					
b.	Prevent advertisement and promotion on tobacco products packages					
c.	Reduce ability of tobacco products packages to mislead consumers (with brand variants such as mild, smooth, lights)					
d.	Increase the noticeability and effectiveness of the pictorial health warnings					
e.	Increase recall of the pictorial health warnings					
f.	Affect consumer perceptions of the attractiveness of the tobacco products					
g.	Affect consumer perceptions of the relative safety of the tobacco products					
h.	Reduce youth experimentation with use of tobacco products					
i.	Prevent the use of brand variants (lights, mild, smooth) of tobacco products as a promotional tool					
j.	Prevent branding and glamorization especially targeted towards youth (specific colors, design and descriptors like jazz, cool)					
k.	Promote quitting among current users					
l.	More clearly inform consumers about the harmful effects of tobacco use					

Appendix D

Questionnaire: Assessing the Indian Socio-Political Scenario for Plain Packaging of Tobacco Products as a Policy Intervention

Tick only one answer unless otherwise specified

Details of the Interviewee

Gender ☐ Male ☐ Female

Age (in years)

Education (*Tick highest qualification only*)

- a. Advanced professional degree (Eg. PhD etc.) ☐
- b. Graduate or Post-graduate ☐
- c. PG Diploma ☐
- d. High School Certificate ☐
- e. Middle School Certificate ☐
- f. Primary School Certificate ☐
- g. Illiterate ☐

Current Occupation

- a. Professional (e.g. doctors, nurses, lawyers, engineers etc.) ☐
- b. Semi-Professional (technicians, assistants etc.) ☐
- c. Clerical, shop owner, farmer ☐
- d. Skilled worker (e.g. carpenter, plumber etc. **with** formal training or certificate) ☐
- e. Semi-skilled worker(e.g. carpenter, plumber etc. **without** any formal training or certificate) ☐
- f. Unskilled worker (Labourer) ☐
- g. Unemployed ☐

Monthly family income from all sources

- a. $\geq 29,766$ ☐
- b. Rs. 14,883-29,765 ☐
- c. Rs. 11,162-14,882 ☐
- d. Rs. 7442-11,161 ☐
- e. Rs. 4465-7441 ☐
- f. Rs. 1503-4464 ☐
- g. ≤ 1502 ☐

1. Please select one of the following options:

- a. I currently use tobacco products ☐
- b. I have used tobacco product in the past but I have quit now ☐ --- Quit since ____ months
- c. I have never used any tobacco products --- Go to Q3 ☐

2. Which product do you use now or used in the past? (*Tick all that apply*)

- a. Cigarette ☐
 - b. Bidi ☐
 - c. Chewing tobacco (gutka, zarda, khaini etc) ☐
 - d. Others (Please specify) ☐
- _____

3. Based on what you know or believe, are there any illnesses or diseases caused by tobacco use?

- a. Yes ☐ ---Go to Q4
- b. No ☐ ---Go to Q5
- c. Refused ☐ ---Go to Q5
- d. Don't know ☐ ---Go to Q5

4. Which diseases or illnesses are caused by tobacco use (smoking or use of smokeless tobacco)?
(*Tick all that apply*) (ONLY PROBE: Any others? Others?; ASK SEPARATELY
FOR SMOKING AND SMOKELESS FORMS; DO NOT PROBE FOR
INDIVIDUAL DISEASES)

Disease/Illness	Response	
	Smoking forms	Smokeless forms
1. Respiratory Diseases (Bronchitis, Asthma, emphysema coughing etc.)		
2. Cardiovascular Diseases (Heart disease, gangrene, hypertension, stroke etc.)		
3. Various types of cancers (Lung, Oral, Breast, Bladder, etc.)		
4. Diabetes		
5. Eye problems (e.g. blindness, etc)		
6. Reproductive problems (e.g. impotence, infertility etc.)		
7. Child related problems (e.g. sudden death, low birth weight babies, infections etc.)		
8. Infections (e.g. Pneumonia, tuberculosis, flu/cold, etc.)		
9. Kidney problems		
10. Mental illnesses (e.g. depression, anxiety etc.)		
11. Hygiene problems (e.g. bad breath, stained teeth, etc.)		
12. Others		

5. When you look at a tobacco pack, what do you usually notice first?

a. Warning labels

☐

b. Other aspects such as branding (including brand name, colour, design)

☐

c. Something else on the pack (Please specify)

☐

d. Refused

☐

e. Don't know

☐

Show current pictures on tobacco packs

6. Do these pictorial warnings effectively inform you about the hazards of tobacco use?

- | | |
|---------------|--------------------------|
| a. Surely yes | <input type="checkbox"/> |
| b. Maybe yes | <input type="checkbox"/> |
| c. Maybe no | <input type="checkbox"/> |
| d. Surely no | <input type="checkbox"/> |
| e. Refused | <input type="checkbox"/> |
| f. Don't know | <input type="checkbox"/> |

7. To what extent do you think the pictorial health warnings currently on tobacco packs motivate users to quit?

- | | |
|---------------|--------------------------|
| a. Not at all | <input type="checkbox"/> |
| b. Somewhat | <input type="checkbox"/> |
| c. Greatly | <input type="checkbox"/> |
| d. Refused | <input type="checkbox"/> |
| e. Don't know | <input type="checkbox"/> |

8. To what extent do you think the pictorial health warnings currently on tobacco packs motivate non-users to stay quit?

- | | |
|---------------|--------------------------|
| a. Not at all | <input type="checkbox"/> |
| b. Somewhat | <input type="checkbox"/> |
| c. Greatly | <input type="checkbox"/> |
| d. Refused | <input type="checkbox"/> |
| e. Don't know | <input type="checkbox"/> |

9. How often do you think that seeing a tobacco pack would lead you to think that tobacco can't be as harmful as the health experts say?

- | | |
|--------------|--------------------------|
| a. Never | <input type="checkbox"/> |
| b. Rarely | <input type="checkbox"/> |
| c. Sometimes | <input type="checkbox"/> |
| d. Often | <input type="checkbox"/> |

- e. Very often ☐
- f. Refused ☐
- g. Don't know ☐

10. Do you think tobacco product packs are attractive?

- a. Surely yes ☐
- b. Maybe yes ☐
- c. Maybe no ☐
- d. Surely no ☐
- e. Refused ☐
- f. Don't know ☐

11. Do you think that colours, designs, gloss and large fonts of brand name on the tobacco pack distract a consumer from the pictorial health warning?

- a. Surely yes ☐
- b. Maybe yes ☐
- c. Maybe no ☐
- d. Surely no ☐
- e. Refused ☐
- f. Don't know ☐

12. Do you think that the tobacco industry uses attractive packaging to lure *adults* into using their products?

- a. Surely yes ☐
- b. Maybe yes ☐
- c. Maybe no ☐
- d. Surely no ☐
- e. Refused ☐
- f. Don't know ☐

13. Do you think that the tobacco industry uses attractive packaging to lure *children and adolescents* into using their products?

- a. Surely yes ☐
- b. Maybe yes ☐
- c. Maybe no ☐
- d. Surely no ☐
- e. Refused ☐
- f. Don't know ☐

14. In your opinion, how different are tobacco brands (*Tick the appropriate box for all three*)

	Not at all different	Somewhat different	Very different	Refused	Don't know
a. In how prestigious they are					
b. In how harmful they are					
c. In how attractive they are to adolescents and other consumers					

15. Tobacco companies often use tobacco packaging for promotional purposes. Because of this, some health authorities in other countries have proposed that tobacco should be sold in plain packaging (Show dummy packs). This means that all packs would look the same with logos and colours removed. The brand name in plain text and pictorial health warnings would still remain on the packs. Overall, do you approve or disapprove of this plain packaging proposal?

- a. Strongly approve ☐
- b. Somewhat approve ☐
- c. Somewhat disapprove ☐
- d. Strongly disapprove ☐
- e. Refused ☐
- f. Don't know ☐

16. Do you think plain packaging (show dummy packs) of tobacco products can reduce the attractiveness of tobacco products? (*Ask for both, users as well as non-users*)

	Among users	Among non-users
a. Surely yes		
b. Maybe yes		
c. Maybe no		
d. Surely no		
e. Refused		
f. Don't know		

17. Do you think plain packaging (show dummy packs) of tobacco products can motivate tobacco users to quit tobacco use?

- a. Surely yes ☐
- b. Maybe yes ☐
- c. Maybe no ☐
- d. Surely no ☐
- e. Refused ☐
- f. Don't know ☐

18. Do you think plain packaging (show dummy packs) of tobacco products makes the pictorial warnings more effective?

- a. Surely yes ☐
- b. Maybe yes ☐
- c. Maybe no ☐
- d. Surely no ☐
- e. Refused ☐
- f. Don't know ☐

19. Which of these tobacco packs do you think is more effective in discouraging non-users from initiating tobacco use?

- a. Pack 1: current packaging (current pictorial warning) ☐
- b. Pack 2: plain packs (with current pictorial warnings) ☐
- c. Pack 3: plain pack (with an effective Australian pictorial warning) ☐

20. Which of these tobacco packs do you think is more effective in encouraging users to quit?

- a. Pack 1: current packaging (current pictorial warning) ☐
- b. Pack 2: plain packs (with current pictorial warnings) ☐
- c. Pack 3: plain pack (with an effective Australian pictorial warning) ☐

21. In your opinion, plain packs of which colour will be more effective in decreasing the appeal and attractiveness of tobacco packaging?

- a. Brown ☐
- b. Green ☐
- c. Grey ☐
- d. White ☐
- e. Black ☐
- f. Others (Please specify) ☐
- g. Refused ☐
- h. Don't know ☐

Appendix E

सर्वेक्षण: नीतिगत सुधार के रूप में तंबाकू उत्पादों की साधारण पैकेजिंग के लिए भारतीय सामाजिक-राजनैतिक परिवेश का मूल्यांकन

- स्पष्ट न किया हो तो कृपया एक ही उत्तर चुनें।

सहभागी का विवरण

लिंग पुरुष ☐ स्त्री ☐

आयु ☐☐ (वर्षों में)

शिक्षा का स्तर (केवल अधिकतम शैक्षणिक स्तर चुनें)

- | | | |
|-----|--|--------------------------|
| ए. | उच्चतम व्यावसायिक डिग्री (पी. एच. डी. आदि) | <input type="checkbox"/> |
| बी. | स्नातक या स्नातकोत्तर डिग्री | <input type="checkbox"/> |
| सी. | डिप्लोमा | <input type="checkbox"/> |
| डी. | कक्षा 9-12 | <input type="checkbox"/> |
| ई. | कक्षा 6-8 | <input type="checkbox"/> |
| एफ. | कक्षा 1-5 | <input type="checkbox"/> |
| जी. | अशिक्षित | <input type="checkbox"/> |

वर्तमान व्यवसाय

- | | | |
|-----|---|--------------------------|
| ए. | व्यावसायिक (डॉक्टर, नर्स, वकील, इंजीनियर, आदि) | <input type="checkbox"/> |
| बी. | अर्ध व्यावसायिक (टैक्निशन, सहायक आदि) | <input type="checkbox"/> |
| सी. | क्लर्क, दुकानदार, किसान | <input type="checkbox"/> |
| डी. | कुशल श्रमिक (बढ़ई, प्लम्बर आदि जिन्होंने औपचारिक प्रशिक्षण प्राप्त किया हो) | <input type="checkbox"/> |
| ई. | अर्ध-कुशल श्रमिक (बढ़ई, प्लम्बर आदि जिन्होंने कोई औपचारिक प्रशिक्षण प्राप्त <u>न</u> किया हो) | <input type="checkbox"/> |
| एफ. | अकुशल श्रमिक (मजदूर) | <input type="checkbox"/> |
| जी. | बेरोज़गार | <input type="checkbox"/> |

समस्त स्रोतों से मासिक पारिवारिक आय

- | | | |
|-----|--------------------------|--------------------------|
| ए. | रुपए 29,766 या उससे अधिक | <input type="checkbox"/> |
| बी. | रुपए 14,883 - 29,765 | <input type="checkbox"/> |
| सी. | रुपए 11,162 - 14,882 | <input type="checkbox"/> |
| डी. | रुपए 7,442 - 11,161 | <input type="checkbox"/> |
| ई. | रुपए 4,465 - 7,441 | <input type="checkbox"/> |
| एफ. | रुपए 1,503 - 4,464 | <input type="checkbox"/> |
| जी. | रुपए 1,502 या उससे कम | <input type="checkbox"/> |

1. कृपया निम्नलिखित में से एक को चुनें :
 ए. मैं वर्तमान में तंबाकू उत्पादों का इस्तेमाल करता/करती हूँ। ☐
 बी. मैं पहले तंबाकू का इस्तेमाल करता/करती था/थी पर ☐.....महीनों से छोड़ा है।
 अब मैंने इसे छोड़ दिया है। ☐.....प्रश्न 3 पर जाएं
 सी. मैंने कभी भी तंबाकू उत्पादों का उपयोग नहीं किया। ☐.....प्रश्न 3 पर जाएं
2. आप इस समय कौन से उत्पाद का इस्तेमाल कर रहे हैं या पहले कर रहे थे? (निम्नलिखित में से एक या एक से अधिक विकल्प चुनें)
- ए. सिगरेट ☐
 बी. बीड़ी ☐
 सी. चबाने वाला तंबाकू (गुटका, जर्दा, खैनी आदि) ☐
 डी. अन्य (कृपया स्पष्ट करें)..... ☐
3. आपकी जानकारी या मान्यता के अनुसार, क्या तंबाकू के उपयोग से बिमारियाँ होती हैं?
- ए. हाँ ☐-प्रश्न 4 पर जाएं
 बी. नहीं ☐-प्रश्न 5 पर जाएं
 सी. जानकारी देने से मना कर दिया ☐-प्रश्न 5 पर जाएं
 डी. पता नहीं ☐-प्रश्न 5 पर जाएं
4. तंबाकू (धूम्रपान व चबाने से) के उपयोग से कौन-कौन सी बिमारियाँ होती हैं? (निम्नलिखित में से एक या एक से अधिक विकल्प चुनें) (जाँच करें – कोई अन्य? अन्य?, धूम्रपान और चबाने वाले तंबाकू पदार्थ, दोनों के लिए अलग से पूछें)

बिमारियाँ	जवाब	
	धूम्रपान से	चबाने वाले तंबाकू पदार्थ से
1. श्वास लेने संबंधी (ब्रांगकाइटिस, दमा, खॉसी आदि)		
2. हृदय रोग संबंधी (दिल की बीमारी, स्ट्रोक, उच्च रक्तचाप आदि)		
3. विभिन्न प्रकार के कैंसर (फेफड़ों का, मुँह का, मूत्राशय का आदि)		
4. मधुमेह		
5. आँख संबंधी (अंधापन आदि)		

6. प्रजनन संबंधी (नपुंसकता, शुक्राणु संबंधी समस्या आदि)		
7. बच्चों से संबंधित समस्याएं (आकस्मिक मृत्यु, जन्म के समय वजन कम होना, संक्रमण आदि)		
8. संक्रमण (निमोनिया, क्षय रोग, सर्दी-जुकाम आदि)		
9. गुर्दे से संबंधित समस्याएं		
10. मानसिक बिमारियाँ (उदासिनता, व्यग्रता आदि)		
11. स्वच्छता से संबंधित समस्याएं (सांस में बदबू आना, दाँत में दाग पड़ना आदि)		
12. अन्य		

5. जब आप तंबाकू का पैकेट देखते हैं तब इनमें से किस पर सबसे पहले ध्यान देते हैं?
- ए. स्वास्थ्य चेतावनी ☐
- बी. ब्रैंड के अन्य पहलू (जैसे ब्रैंड का नाम, रंग, बनावट आदि) ☐
- सी. पैकेट पर कुछ और (कृपया विवरण दें.....) ☐
- डी. जानकारी देने से मना कर दिया ☐
- ई. पता नहीं ☐

तंबाकू के पैकेट पर वर्तमान में दर्शाए गए चित्र दिखाएं

6. क्या यह चित्रित चेतावनियां आपको तंबाकू उपयोग के खतरों के बारे में प्रभावी ढंग से सही सूचना प्रदान करते हैं?
- ए. निश्चित रूप से, हां ☐
- बी. शायद हो सकता है ☐
- सी. शायद नहीं हो सकता है ☐
- डी. निश्चित रूप से नहीं ☐
- ई. जानकारी देने से मना कर दिया ☐
- एफ. पता नहीं ☐

7. आपके अनुसार तंबाकू के पैकेट पर वर्तमान में छपी हुई सचित्र स्वास्थ्य चेतावनियाँ तंबाकू का उपयोग करने वालों को किस हद तक उसे छोड़ने के लिए प्रेरित करती है?

ए. बिल्कुल नहीं ☐
बी. थोड़ा बहुत ☐
सी. बहुत ज्यादा ☐
डी. जानकारी देने से मना कर दिया ☐
ई. पता नहीं ☐

8. आपके अनुसार तंबाकू के पैकेट पर वर्तमान में छपी हुई सचित्र स्वास्थ्य चेतावनियाँ तंबाकू का उपयोग न करने वालों को किस हद तक उसे इस्तेमाल न करने के लिए प्रेरित करती है?

ए. बिल्कुल नहीं ☐
बी. थोड़ा बहुत ☐
सी. बहुत ज्यादा ☐
डी. जानकारी देने से मना कर दिया ☐
ई. पता नहीं ☐

9. तंबाकू का पैकेट देखने पर क्या आपको ऐसा लगता है कि तंबाकू स्वास्थ्य के लिए उतना हानिकारक नहीं है जितना कि स्वास्थ्य विशेषज्ञ कहते हैं?

ए. कभी ऐसा नहीं लगता ☐
बी. बहुत ही कम बार ऐसा लगता है ☐
सी. कभी-कभी ऐसा लगता है ☐
डी. ज्यादातर ऐसा लगता है ☐
ई. हमेशा ही ऐसा लगता है ☐
एफ. जानकारी देने से मना कर दिया ☐
जी. पता नहीं ☐

10. क्या आप सोचते हैं कि तंबाकू के पैकेट आकर्षक हैं?

ए. निश्चित रूप से हां ☐
बी. शायद हो सकता है ☐
सी. शायद नहीं हो सकता है ☐
डी. निश्चित रूप से नहीं ☐
ई. जानकारी देने से मना कर दिया ☐
एफ. पता नहीं ☐

11. क्या आप सोचते हैं कि तंबाकू के पैकेट पर रंग, डिजाइन, चमक और बड़े-बड़े अक्षर में लिखा गया ब्रॉन्ड का नाम उपभोगकर्ता का चित्रित स्वास्थ्य चेतावनी से ध्यान भटकाता है?
- ए. निश्चित रूप से हां ☐
- बी. शायद हो सकता है ☐
- सी. शायद नहीं हो सकता है ☐
- डी. निश्चित रूप से नहीं ☐
- ई. जानकारी देने से मना कर दिया ☐
- एफ. पता नहीं ☐
12. क्या आप मानते हैं कि तंबाकू उद्योग अपने उत्पादों के प्रति व्यस्कों को आकर्षित करने के लिए आकर्षक पैकेजिंग का इस्तेमाल करते हैं?
- ए. निश्चित रूप से हां ☐
- बी. शायद हो सकता है ☐
- सी. शायद नहीं हो सकता है ☐
- डी. निश्चित रूप से नहीं ☐
- ई. जानकारी देने से मना कर दिया ☐
- एफ. पता नहीं ☐
13. क्या आप मानते हैं कि तंबाकू उद्योग अपने उत्पादों के प्रति किशोर वर्ग को आकर्षित करने के लिए आकर्षक पैकेजिंग का इस्तेमाल करते हैं?
- ए. निश्चित रूप से हाँ ☐
- बी. शायद हो सकता है ☐
- सी. शायद नहीं हो सकता है ☐
- डी. निश्चित रूप से नहीं ☐
- ई. जानकारी देने से मना कर दिया ☐
- एफ. पता नहीं ☐
14. आपके विचार में तंबाकू के विभिन्न ब्रॉन्ड कितने अलग हैं.....(निम्नलिखित वाक्यों के लिए सही जवाब चुनें)

	बिल्कुल अलग नहीं है	थोड़े बहुत अलग हैं	बहुत ही अलग हैं	जानकारी देने से मना कर दिया	पता नहीं
ए. यह दर्शाने में कि वे कितने प्रतिष्ठित हैं					
बी. यह दर्शाने में कि वे कितने हानिकारक हैं					
सी. किशोरों एवं अन्य उपभोगकर्ताओं को आकर्षित करने में					

15. तंबाकू उद्योग अकसर तंबाकू का प्रचार करने के लिए तंबाकू के पैकेट का इस्तेमाल करते हैं। इस वजह से अन्य देशों के स्वास्थ्य विभागों ने यह प्रस्ताव रखा है कि तंबाकू साधारण पैकेट में बेचा जाए (नकली पैक दिखाए)। इसका मतलब यह है कि कंपनी का चिन्ह और रंग हटा दिए जाएंगे जिससे सारे पैकेट एक जैसे दिखें। साधारण शब्दों में ब्रॉन्ड का नाम एवं चित्रित स्वास्थ्य चेतावनियाँ इन साधारण पैकेटों पर नजर आएंगे। कुल मिलाकर, क्या आप इस साधारण पैकेजिंग के प्रस्ताव को मान्यता देते हैं?

- ए. निश्चित रूप से हाँ ☐
 बी. शायद हाँ ☐
 सी. शायद नहीं ☐
 डी. निश्चित रूप से नहीं ☐
 ई. जानकारी देने से मना कर दिया ☐
 एफ. पता नहीं ☐

16. क्या आप मानते हैं कि तंबाकू उत्पादों की साधारण पैकेजिंग (नकली पैक दिखाए) से तंबाकू उत्पादों के प्रति आकर्षण में कमी आएगी? (उपभोक्ताओं तथा गैर उपयोगकर्ताओं दोनों के लिए पूछें)

	उपभोक्ताओं के बीच	गैर उपयोगकर्ताओं के बीच
ए. निश्चित रूप से हाँ		
बी. शायद हो सकता है		
सी. शायद नहीं हो सकता है		
डी. निश्चित रूप से नहीं		
ई. जानकारी देने से मना कर दिया		
एफ. पता नहीं		

17. क्या आप मानते हैं कि तंबाकू उत्पादों की साधारण पैकेजिंग तंबाकू इस्तेमाल करने वालों को तंबाकू छोड़ने के लिए प्रोत्साहित करेगी?

- ए. निश्चित रूप से हाँ ☐
 बी. शायद हो सकता है ☐
 सी. शायद नहीं हो सकता है ☐
 डी. निश्चित रूप से नहीं ☐
 ई. जानकारी देने से मना कर दिया ☐
 एफ. पता नहीं ☐

18. क्या आप मानते हैं कि तंबाकू उत्पादों के साधारण पैकेजिंग चित्रित चेतावनी को ज्यादा प्रभावशाली बनाएंगे?
- ए. निश्चित रूप से हां ☐
- बी. शायद हो सकता है ☐
- सी. शायद नहीं हो सकता है ☐
- डी. निश्चित रूप से नहीं ☐
- ई. जानकारी देने से मना कर दिया ☐
- एफ. पता नहीं ☐
19. निम्नलिखित में से कौन सा तंबाकू पैकेट तंबाकू उपयोग आरंभ करने से उपभोग न करने वालों को अधिक हतोत्साहित करेगा?
- ए. पैकेट 1 : वर्तमान पैकेजिंग (वर्तमान चित्रित चेतावनी) ☐
- बी. पैकेट 2 : साधारण पैकेट (वर्तमान चित्रित चेतावनी के साथ) ☐
- सी. पैकेट 3 : साधारण पैकेट (प्रभावशाली आस्ट्रेलियाई चित्रित चेतावनी के साथ) ☐
20. उपभोक्ताओं को तंबाकू छोड़ने के लिए प्रेरित करने में इन तीनों में से कौन सा पैक ज्यादा प्रभावशाली होगा?
- ए. पैकेट 1 : वर्तमान पैकेजिंग (वर्तमान चित्रित चेतावनी) ☐
- बी. पैकेट 2 : साधारण पैकेट (वर्तमान चित्रित चेतावनी के साथ) ☐
- सी. पैकेट 3 : साधारण पैकेट (प्रभावशाली आस्ट्रेलियाई चित्रित चेतावनी के साथ) ☐
21. आपके अनुसार साधारण पैकेट पर कौन सा रंग पैकेट के आकर्षण को कम करने में ज्यादा प्रभावशाली होगा?
- ए. ब्राऊन (भूरा) ☐
- बी. हरा ☐
- सी. ग्रे (स्लेटी) ☐
- डी. सफेद ☐
- ई. काला ☐
- एफ. अन्य(कृपया विवरण दें) ☐
- जी. जानकारी देने से मना कर दिया ☐
- एच. पता नहीं ☐

A Policy Brief of the Australia India Institute Taskforce on Tobacco Control

“We must make plain packaging a big success so that it becomes the success of the world.”

Margaret Chan, Director-General, World Health Organization, at the 15th World Conference on Tobacco or Health, Singapore

The case for plain packaging made plain

Tobacco-related diseases are one of the largest public health threats the world has ever faced, according to the World Health Organization (WHO). Tobacco use is a significant cause of non-communicable diseases – a major challenge to development in the 21st Century.

India has 275 million tobacco users – nearly one million Indians die each year from tobacco consumption. India will have the fastest rate of rise in deaths attributable to tobacco in the first two decades of the twenty-first century, the WHO predicts. This alone challenges India’s ‘demographic dividend’. The world’s highest incidence of oral cancer occurs in India. Teenagers are an area of concern because many of them begin chewing tobacco when they are as young as eight. A variety of tobacco products are consumed in India, including smokeless forms, making the epidemic-like situation complex. The economic costs of tobacco use are grave.

What is ‘plain packaging’?

Plain packaging of tobacco products refers to legislation that prohibits the use of logos, colours, brand images or promotional information on the packaging of tobacco products. Brand and product names are allowed in a standardised colour and style, in addition to pictorial health warnings.

Image © Commonwealth of Australia



The healthcare costs associated with smoking far outweigh the tax revenue. **In India, revenue collected from tobacco products annually is \$1.62 billion** (largely derived from the taxation of cigarettes), while the annual direct health cost of three tobacco-related diseases (cancer, coronary artery diseases and chronic obstructive lung diseases) is **\$6.32 billion**.

The poor and poorest tend to use tobacco the most, as 80 per cent of smokers live in developing countries. This, in turn, worsens poverty through loss of income, displacement of income from essential needs, loss of productivity, disease and death. Direct expenditure on tobacco by households can impoverish nearly 15 million people in India annually, even more than medical expenditures related to tobacco use.

It is the contention of the Taskforce that the Ministry of Health and Family Welfare of the Indian Government is best positioned and the most authoritative for making a case for plain packaging legislation. This is because the key goal of this initiative is enhancing public health. It will require a joint multi-ministerial effort, including studies of the repercussions for every sector and industry under each ministry's purview.

Plain packaging works

One way to help reduce tobacco consumption is to address the detrimental effect of advertising. The most effective way to do this **is to require plain packaging on all tobacco products. Plain packaging will enhance the impact of the pictorial health warnings, which is particularly appropriate for the large illiterate portion** of Indian society.

With increasing restrictions on tobacco advertising and promotion globally, the tobacco industry has resorted to tobacco packaging to lure customers. The tobacco industry uses misleading brand imagery such as verbal descriptors ('light') and package colours (lighter shades to signify a 'milder' product and dark shades to signify a 'stronger' product). Such misleading brand imagery distracts attention from the pictorial warnings imprinted on the tobacco packs. Scholarly findings suggest that **reductions in brand imagery through plain packaging would reduce the attractiveness of tobacco products, promote cessation-related behaviours among some tobacco users, and reduce initiation.**

Australia took a momentous step forward in the field of tobacco control with the advent of plain packaging. After a recommendation from the National Preventative Health Taskforce, on April 29, 2010, the Australian government announced that it would introduce legislation for the mandatory plain packaging of tobacco products in 2012. **Australia is the first country in the world to set a deadline for this new legal measure.**

India and Australia are both signatories to the Framework Convention on Tobacco Control (FCTC). They can learn from each other's experiences to develop more effective tobacco control policy and legislation. The FCTC guidelines recommend plain packaging as a means of implementing Article 11 (packaging and labelling) and Article 13 (a comprehensive ban on advertising).

Compatibility with international law

Plain packaging has attracted enthusiasm and support from all over the world, and provoked a fierce debate over the legality of such legislation. One of the most relevant questions concerning the alleged incompatibility of generic packaging with the Trade-Related Aspects of Intellectual Property Rights agreement (TRIPS) is related to Article 8(1). This provision states clearly that states may adopt measures necessary to protect public health; the Doha Declaration also mentions public health as a viable exception, suggesting that **plain packaging is compatible with TRIPS.**

We suggest some steps India can take in the future.

A. Driving a domestic consensus

Overall stakeholder assessment: Now that India has implemented pictorial warnings, the next steps are to increase the size of pictorial health warnings and then move to plain packaging of all tobacco products. As in Australia, the key is to advance from increasing the frequency of rotation of pictorial health warnings to gradually requiring larger warning images until plain packaging can be established as a legal norm.

The Taskforce recommendation: A strategic way to move forward legislatively with respect to plain packaging is to boldly **state a clear public health position, perhaps a Declaration**, on the elimination of tobacco-related harms and move to enact a law that addresses implementation of a standard font, colour, size and style for all types of tobacco products (including smoked and smokeless products) and bars all promotional information on the product. Alternatively, Sections 5 and 7 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) can be suitably amended to include these provisions, so that the changes meet India's domestic public health objectives. Once there is a broad policy framework then any dispute, whether domestic or international, will be difficult to substantiate given the support for the Indian Government's public health position.

Significant inter-ministerial buy-in at the highest level is required, and **all** tobacco and tobacco-containing products would need to come under the purview of plain packaging legislation due to the diversity of tobacco products used in India. Plain packaging legislation would primarily concern the ministries of Health and Family Welfare (MoHFW), Law and Justice, Agriculture, Com-

merce and Industry, Finance and Labour. The Health Ministry is best positioned to make a convincing case, but it would require a joint multi-ministerial effort including an analysis of the plain packaging legislation and the implied repercussions for every sector and industry under each ministry's purview. The MoHFW would need to devise a Plan of Proceedings that includes a timeline to effectively implement the law.

B. Legislative action steps

Overall stakeholder assessment: Transparent, participatory and informed lawmaking is required. Plain packaging laws ought to be backed by evidence to make a cogent public health case.

The Taskforce recommendation: At the Central Government level, there are a number of administrative authorities overseeing the tobacco industry: determining the agency ultimately responsible for enforcing plain packaging will depend on the final specifics of the law ultimately drafted.

Legislation will need to make requirements precise and specific. It should minimise loopholes. Additional laws such as the *Trademarks Act* (especially Section 11) and various consumer laws need to be reconciled to facilitate the implementation of plain packaging. Specifically, **an overriding provision** to the effect that, notwithstanding any other provision in any other prevailing law, the Act would be overriding, could help make the case for plain packaging stronger in court.

Section 5 of COTPA imposes a ban on all types of descriptors, but unfortunately does not prohibit brands from advertising on the package. The Indian Government should amend the COTPA to:

- Extirpate the provision of direct advertising on the package
- Clarify a definition of 'indirect advertisements'
- Eliminate Point Of Sale displays

C. Bringing plain packaging to India

The Taskforce recommendation: The Government can consider two policy approach options. First, push for a steady increase in the size of pictorial warnings on packs to eventually lead to plain packaging. Second, make a direct push for standardisation of size, colour, font and style of tobacco packaging, barring all promotional information for all kinds of tobacco products as soon as is possible. Regardless of which approach is taken, a robust body of research evidence supporting the efficacy of plain packaging needs to be compiled with the help of tobacco control experts. The results of this research are presented below.

Just as the UK initiated a multi-week national consultation in April 2012, the Indian Government can sponsor these successive steps culminating in legislation:

- Intense preparatory work, including market research and consumer perceptions from rural and urban population across states, stakeholder sensitisation, alliance-building, and gathering public opinion through polls in a systematic manner
- Inclusively engaging a range of stakeholders: retailers, workers in the tobacco industry, the healthcare sector, victims of tobacco use, youth and their families, the judiciary, and the academic community.

This Taskforce has made significant progress in many of these areas, especially market research and background research. However, this is just the beginning of the endeavour to introduce plain packaging in India.

D. International agreements

Overall stakeholder assessment: India has considerable leeway at the domestic level to go beyond what is merely permitted by international law. The FCTC allows for signatory states to go beyond its provisions. ***International investment agreements that may threaten plain packaging will not hold against holistic legislation that treats all investors equally.***

The Taskforce recommendation: At present, India has signed more than 60 bilateral investment treaties (BITs), multilateral treaties and Free Trade Agreements (FTAs) with varying definitions of investments which dictate the acquisition and use of intellectual property. India will need to take care that in future there is close scrutiny of definitions within the agreements, especially relating to investments, investors and intellectual property.

Specifically, the following clauses in these treaties will need to be examined closely. First, the wording and implications of ‘umbrella clauses’ that allow companies to take their dispute to investor-state arbitration tribunals and then avail themselves of protections within investment agreements. This type of contention is unlikely to hold based on international law. Second, the wording and implications of ‘survival clauses’ in bilateral treaties, which state that in the event of investor-state disputes, where a treaty is terminated without mutual consent, investments made will enjoy the *status quo* for between 10 to 15 years, depending on specifics.

KEY FINDINGS: A MARKET RESEARCH STUDY ON PLAIN PACKAGING IN INDIA

Results from a market research study involving an opinion poll, key stakeholder analysis and focus group discussions suggest:

- Across all demographic groups (age groups, gender, socio-economic status categories, tobacco user status, users of various types of tobacco products), tobacco packs are considered to be attractive (76 per cent), and serve the purpose of promoting tobacco products to children and adolescents (84 per cent) as well as to adults (87 per cent).
- Various colours, brand names, logos, design and graphics and misleading descriptors on tobacco packs are more widely noticed as compared to the pictorial warnings (53 per cent compared with 28 per cent) and cause distraction from the health warnings (83 per cent).
- Expensive tobacco brands with flashy packs are perceived to be associated with a style factor and reflect an aspirational value. A male participant from a high SES background shared, “If I am walking with an expensive cigarette packet, it will create a certain status around me.”
- There was substantial support across demographic groups (69 per cent) and key stakeholders (92 per cent), who favoured plain packaging for tobacco products.
- Plain packaging would help in:
 - Reducing the attractiveness, appeal and promotional value of the tobacco pack (over 80 per cent)
 - Preventing experimentation and initiation of tobacco use among children and youth (over 60 per cent)
 - Motivating tobacco users to quit (83 per cent)
 - Increase noticeability and effectiveness of the pictorial health warnings on tobacco packs (over 90 per cent)
 - Reducing the sale of tobacco products.

Proposed Plain Packaging for Indian Tobacco Products



